

APPELLATE COURT
OF THE
STATE OF CONNECTICUT

A.C. 40026

NICHOLAS CRISMALE

V.

CHRISTOPHER ANDREW WALSTON ET AL

APPENDIX OF THE PLAINTIFF/APPELLANT, NICHOLAS CRISMALE
(PART 1 OF 1)

FOR THE APPELLANT:

JENNIFER ANTOGNINI-O'NEILL, ESQ.
JENNIFER ANTOGNINI-O'NEILL, LLC
679 RIDGE ROAD
MIDDLETOWN, CT 06457
TEL: 860-490-2789
FAX: 860-346-3467
joneillz@sbcglobal.net
JURIS NO.: 408569

TABLE OF CONTENTS

	<u>Page</u>
Docket Sheet / Case Detail	A1
Complaint	A5
Answer and Special Defenses	A13
Reply to Special Defenses	A17
Defendant's Motion for Summary Judgment and Memorandum of Law and Exhibits	A19
Exh. A Defendant's Affidavit	A41
Exh. B Plaintiff's Response to Request for Interrogatories	A45
Exh. C Officer Chemacki's Affidavit	A56
Exh. D Officer Samorajczyk's Affidavit	A59
Exh. E Deposition Tr., H. Avila, select pp.	A63
Exh. F Deposition Tr., S. Bertrand, select pp.	A80
Exh. G Deposition Tr., S Maynor, select pp.	A89
Exh. H Deposition Tr., plaintiff, select pp.	A97
Plaintiff's Objection to Motion for Summary Judgment and Exhibits	A117
Exh. 1 3/17/14 Criminal Trial Tr., select pp.	A131
Exh. 2 3/18/14 Criminal Trial Tr., select pp.	A150
Exh. 3 Officer Samorajczyk's Affidavit	A160
Exh. 4 Officer Chemacki's Affidavit	A164
Exh. 5 Deposition Tr, plaintiff, select pp.	A168
Exh. 6 Misdemeanor Summons/Complaint	A182
Exh. 7 4/19/12 Tr., DEEP Dispatch	A184
Exh. 8 3/10/14 Hartford Court Article	A188
Defendant's Reply to Objection to Motion for Summary Judgment	A190
Memorandum of Decision on Defendant's Motion for Summary Judgment	A195
Judgment File	A214
Appeal Form	A215
Docketing Statement	A218



State of Connecticut Judicial Branch Superior Court Case Look-up



Superior Court Case Look-up

Civil/Family
Housing
Small Claims

CRISMALE, NICOLAS v. WALSTON, CHRISTOPHER ANDREW
NNH-CV14-6049358-S Et Al

Prefix/Suffix: [none] Case Type: T50 File Date: 08/27/2014 Return Date: 09/16/2014

Attorney/Firm Juris Number Look-up

Case Detail Notices History Scheduled Court Dates E-Services Login Screen Section Help ▶

[To receive an email when there is activity on this case click here.](#)

Case Look-up

By Party Name
By Docket Number
By Attorney/Firm Juris Number
By Property Address

Short Calendar Look-up

By Court Location
By Attorney/Firm Juris Number
Motion to Seal or Close
Calendar Notices

Court Events Look-up

By Date
By Docket Number
By Attorney/Firm Juris Number

Pending Foreclosure Sales

Understanding
Display of Case Information

Contact Us



Comments

Information Updated as of: 10/23/2017

Case Information

Case Type: T50 - Torts - Defamation
Court Location: NEW HAVEN JD
List Type: No List Type
Trial List Claim:
Last Action Date: 07/20/2017 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 12/27/2016
Disposition: SUMMARY JUDGMENT-DEFENDANT
Judge or Magistrate: HON ROBIN WILSON

Party & Appearance Information

Party	No Fee Party	Category
P-01 NICOLAS CRISMALE		Plaintiff
Attorney: ⚡ JOHN R WILLIAMS (067962)	File Date: 08/27/2014	
ASSOCIATES, LLC		
51 ELM ST STE 409		
NEW HAVEN, CT 06510		
Attorney: ⚡ KATRENA K ENGSTROM (102746)	File Date: 04/07/2016	
& ASSOCIATES, LLC		
51 ELM ST, SUITE 409		
NEW HAVEN, CT 06510		
D-01 CHRISTOPHER ANDREW WALSTON		Defendant
Attorney: ⚡ VINCENT CERVONI (409458)	File Date: 09/19/2014	
221 NORTH MAIN STREET		
WALLINGFORD, CT 06492		
Attorney: ⚡ KATZ & SELIGMAN PC (101040)	File Date: 09/25/2014	
130 WASHINGTON STREET		
HARTFORD, CT 06106		
D-02 JEFFREY SAMORAJCZYK		Defendant
Attorney: ⚡ JOSEPH A JORDANO (418368)	File Date: 10/02/2014	
AG-CIVIL RIGHTS/TORTS		
55 ELM ST PO BOX 120		
HARTFORD, CT 06105		
D-03 TODD AARON CHENACKI		Defendant
Attorney: ⚡ JOSEPH A JORDANO (418368)	File Date: 10/02/2014	
AG-CIVIL RIGHTS/TORTS		
55 ELM ST PO BOX 120		
HARTFORD, CT 06105		

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an "e" in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the [Electronic Access to Court Documents Quick Card](#).
- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.*
- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.*

*Any documents protected by law Or by court order that are Not open to the public cannot be viewed by the public online And can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them.

Motions / Pleadings / Documents / Case Status					
Entry No	File Date	Filed By	Description	Arguable	
	08/27/2014	P	<u>SUMMONS</u>		
	08/27/2014	P	<u>COMPLAINT</u>		
	08/27/2014	P	<u>RETURN OF SERVICE</u>		
	09/19/2014	D	<u>APPEARANCE</u> Appearance		
	09/25/2014	D	<u>APPEARANCE</u> Appearance		
	10/02/2014	D	<u>APPEARANCE</u> Appearance		
	04/07/2016	P	<u>APPEARANCE</u> Appearance		
	07/25/2017		<u>ADMINISTRATIVE DOCUMENT</u>		
101.00	09/30/2014	D	<u>MOTION FOR EXTENSION OF TIME TO PLEAD</u> RESULT: Granted 10/14/2014 HON LINDA LAGER	No	
101.10	10/14/2014	C	<u>ORDER</u> RESULT: Granted 10/14/2014 HON LINDA LAGER	No	
102.00	10/01/2014	D	<u>CLAIM FOR JURY OF 6</u>	No	
103.00	10/02/2014	D	<u>MOTION FOR EXTENSION OF TIME TO PLEAD</u> RESULT: Granted 10/23/2014 HON JOHN NAZZARO	No	
103.10	10/23/2014	C	<u>ORDER</u> RESULT: Granted 10/23/2014 HON JOHN NAZZARO	No	

104.00	10/27/2014	D	<u>NOTICE</u>	No
			Notice of Filing First Set of Nonstandard Interrogatories & Requests for Production	
105.00	10/30/2014	P	<u>REQUEST TO EXTEND TIME TO RESPOND TO INTERROGATORIES OR PRODUCTION REQ P.B. 13-7(a)(2)/13-10(a)(2)</u>	No
106.00	11/13/2014	D	<u>ANSWER AND SPECIAL DEFENSE</u>	No
107.00	11/17/2014	P	<u>REPLY TO SPECIAL DEFENSE</u> of Defendants Chemacki and Samorajczyk	No
108.00	03/17/2015	D	<u>MOTION FOR ORDER OF COMPLIANCE - PB SEC 13-14 (INTERR/PROD - 13-6/13-9)</u> motion to compel	No
109.00	03/23/2015	P	<u>BRIEF</u> in Opposition to Motion for Order of Compliance	No
110.00	04/30/2015	D	<u>NOTICE</u> Defendants' Notice of Service of Second Non-Standard Interrogatories and Req. for Production	No
111.00	05/05/2015	D	<u>MOTION FOR CAPIAS</u> RESULT: Granted 5/18/2015 HON ANGELA ROBINSON	No
111.10	05/18/2015	C	<u>ORDER</u> RESULT: Granted 5/18/2015 HON ANGELA ROBINSON	No
112.00	05/29/2015	C	<u>CAPIAS ISSUED</u>	No
113.00	11/10/2015	D	<u>MOTION FOR SUMMARY JUDGMENT</u> RESULT: Granted 4/21/2016 HON ROBIN WILSON	Yes
113.10	04/21/2016	C	<u>ORDER</u> RESULT: Granted 4/21/2016 HON ROBIN WILSON	No
113.20	04/21/2016	C	<u>MEMORANDUM OF DECISION ON MOTION</u> RESULT: Granted 4/21/2016 HON ROBIN WILSON	No
114.00	11/10/2015	D	<u>MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT</u>	No
115.00	01/25/2016	P	<u>OBJECTION TO MOTION</u> SUMMARY JUDGMENT	No
116.00	02/19/2016	D	<u>REPLY</u> Reply to Plaintiff's Opposition to Summary Judgment	No
117.00	03/02/2016	D	<u>ANSWER AND SPECIAL DEFENSE</u>	No
118.00	03/03/2016	P	<u>REPLY TO SPECIAL DEFENSE</u> of Defendant Walston	No
119.00	03/03/2016	P	<u>CLAIM FOR JURY OF 6</u>	No
120.00	03/07/2016	D	<u>MOTION FOR SUMMARY JUDGMENT</u>	Yes
120.10	12/27/2016	C	<u>MEMORANDUM OF DECISION ON MOTION</u> RESULT: Granted 12/27/2016 HON ROBIN WILSON	No
120.20	12/27/2016	C	<u>JUDGMENT FILE</u>	No
121.00	03/07/2016	D	<u>MEMORANDUM</u> Christopher Walston's Memorandum of Law in Support of His Motion for Summary Judgment	No
122.00	04/07/2016	P	<u>OBJECTION TO MOTION</u> opposition to Defendant Walston's Motion for Summary Judgment	No
123.00	04/21/2016	C	<u>JUDGMENT IN PART - GENERAL CASE REMAINS PENDING</u> RESULT: Order 4/21/2016 HON ROBIN WILSON	No

123.01	04/21/2016	C	NOTICE	No
124.00	04/22/2016	D	MOTION FOR CONTINUANCE Argument on Entry No. 120.00 and 122.00 RESULT: Granted 4/25/2016 HON JON ALANDER	No
124.10	04/25/2016	C	ORDER RESULT: Granted 4/25/2016 HON JON ALANDER	No
125.00	09/08/2016	D	REPLY Christopher Walston's Reply to Plaintiff's Objection to Motion for Summary Judgment	No
126.00	12/27/2016	C	SUMMARY JUDGMENT-DEFENDANT RESULT: HON ROBIN WILSON	No
127.00	01/17/2017	P	APPEAL TO APPELLATE COURT ALL FEES PAID	No

Scheduled Court Dates as of 10/20/2017				
NNH-CV14-6049358-S - CRISMALE, NICOLAS v. WALSTON, CHRISTOPHER ANDREW Et Al				
#	Date	Time	Event Description	Status
No Events Scheduled				

Judicial ADR events may be heard in a court that is different from the court where the case is filed. To check location information about an ADR event, select the **Notices** tab on the top of the case detail page.

Matters that appear on the Short Calendar and Family Support Magistrate Calendar are shown as scheduled court events on this page. The date displayed on this page is the date of the calendar.

All matters on a family support magistrate calendar are presumed ready to go forward.

The status of a Short Calendar matter is not displayed because it is determined by markings made by the parties as required by the calendar notices and the [civil](#) or [family](#) standing orders. Markings made electronically can be viewed by those who have electronic access through the Markings History link on the Civil/Family Menu in E-Services. Markings made by telephone can only be obtained through the clerk's office. If more than one motion is on a single short calendar, the calendar will be listed once on this page. You can see more information on matters appearing on Short Calendars and Family Support Magistrate Calendars by going to the [Civil/Family Case Look-Up](#) page and [Short Calendars By Juris Numbers](#) or [By Court Location](#).

Periodic changes to terminology that do not affect the status of the case may be made.

This list does not constitute or replace official notice of scheduled court events.

Disclaimer: For civil and family cases statewide, case information can be seen on this website for a period of time, from one year to a maximum period of ten years, after the disposition date. If the Connecticut Practice Book Sections 7-10 and 7-11 give a shorter period of time, the case information will be displayed for the shorter period. Under the Federal Violence Against Women Act of 2005, cases for relief from physical abuse, foreign protective orders, and motions that would be likely to publicly reveal the identity or location of a protected party may not be displayed and may be available only at the courts.

RETURN: SEPTEMBER 16, 2014

NICHOLAS CRISMALE

SUPERIOR COURT

VS.

J. D. OF NEW HAVEN

CHRISTOPHER ANDREW WALSTON,
JEFFREY SAMORAJCZYK and
TODD AARON CHENACKI

AUGUST 11, 2014

COMPLAINT

COUNT ONE

1. The plaintiff is a commercial fisherman who resides in Guilford, Connecticut.

2. The defendant Walston is a resident of Guilford who is employed by his father in the stair business during the winter months and in the spring and summer months does some shell fishing.

3. The defendants Samorajczyk and Chenacki are law enforcement officers employed by the Connecticut Department of Environmental Protection. They are sued only in their individual capacities.

4. On December 14, 2011, the defendant Walston falsely and maliciously stated to the defendants Samorajczyk and Chenacki that the plaintiff was trespassing on his clam beds and stealing his clams.

5. As a result, the plaintiff was arrested and prosecuted on criminal

charges of which he was innocent, and of which the defendant Walston knew he was innocent, and incurred economic losses associated with his defense against the said false charges and also suffered humiliation and anxiety.

6. Following the plaintiff's arrest, the defendant Walston stated to a reporter for the Hartford Courant concerning the plaintiff's arrest: "I nailed him and I nailed him good."

7. On March 18, 2014, a jury in the Superior Court at New Haven found the plaintiff not guilty of all charges.

WHEREFORE the plaintiff claims judgment against the defendant Walston for compensatory and punitive damages for slander.

COUNT TWO

1 - 7. Paragraphs 1 through 7 of Count One are hereby made Paragraphs 1 through 7, respectively, of Count Two.

WHEREFORE the plaintiff claims judgment against the defendant Walston for compensatory and punitive damages for malicious prosecution.

COUNT THREE

1. The plaintiff is a commercial fisherman who resides in Guilford, Connecticut.

2. The defendants Samorajczyk and Chenacki are law enforcement officers employed by the Connecticut Department of Environmental Protection. They are sued only in their individual capacities.

3. At all times mentioned herein, the defendants Samorajczyk and Chenacki were acting under color of law.

4. On December 14, 2011, the defendants Samorajczyk and Chenacki arrested the plaintiff without a warrant and falsely and maliciously accused him of the crimes of violating the terms of his Connecticut Shellfish License and of the crime of larceny in the Fourth Degree. Thereafter they prepared official reports, which they transmitted to the prosecuting attorneys in New Haven maliciously repeating the said false accusations.

5. As a result, the plaintiff was prosecuted on the aforesaid criminal charges of which he was innocent, and of which the defendants Samorajczyk and Chenacki knew he was innocent, and incurred economic losses associated with his defense against the said false charges and also suffered humiliation and anxiety.

6. On March 18, 2014, a jury in the Superior Court at New Haven found the plaintiff not guilty of all charges.

7. In the manner described above, the defendants Samorajczyk and Chenacki violated the plaintiff's right to be free from malicious prosecution, a

right secured to him by the Fourth Amendment to the United States Constitution as enforced through Sections 1983 and 1988 of Title 42 of the United States Code.

WHEREFORE the plaintiff claims judgment against the defendant Samorajczyk for compensatory damages, punitive damages, attorney fees and costs.

COUNT FOUR

1 - 7. Paragraphs 1 through 7 of Count Three are hereby made Paragraphs 1 through 7, respectively, of Count Four.

WHEREFORE the plaintiff claims judgment against the defendant Chenack for compensatory damages, punitive damages, attorney fees and costs.

COUNT FIVE

1. The plaintiff is a commercial fisherman who resides in Guilford, Connecticut.

2. The defendants Samorajczyk and Chenacki are law enforcement officers employed by the Connecticut Department of Environmental Protection. They are sued only in their individual capacities.

3. At all times mentioned herein, the defendants Samorajczyk and Chenacki were acting under color of law.

4. On December 14, 2011, the defendants Samorajczyk and Chenacki boarded the plaintiff's boat on Long Island Sound without a warrant and, also without a warrant, seized a large quantity of fresh clams belonging to the plaintiff and dumped them overboard.

5. As a result, the plaintiff suffered economic loss.

6. In the manner described above, the defendants Samorajczyk and Chenacki subjected the plaintiff to a warrantless and unreasonable search and seizure in violation of rights secured to the plaintiff by the Fourth Amendment to the United States Constitution as enforced through Sections 1983 and 1988 of Title 42 of the United States Code.

WHEREFORE the plaintiff claims judgment against defendant Samorajczyk for compensatory damages, punitive damages, attorney fees and costs.

COUNT SIX

1 - 6. Paragraphs 1 through 6 of Count Five are hereby made Paragraphs 1 through 6, respectively, of Count Six.

WHEREFORE the plaintiff claims judgment against defendant Chenacki

for compensatory damages, punitive damages, attorney fees and costs.

COUNT SEVEN

1 - 5. Paragraphs 1 through 5 of Count Five are hereby made Paragraphs 1 through 5, respectively, of Count Seven.

6. In the manner described above, the defendants Samorajczyk and Chenacki subjected the plaintiff to the deprivation of his property without due process of law, both procedural and substantive, in violation of the Fourteenth Amendment to the United States Constitution as enforced through Sections 1983 and 1988 of Title 42 of the United States Code.

WHEREFORE the plaintiff claims judgment against the defendant Samorajczyk for compensatory damages, punitive damages, attorney fees and costs.

COUNT EIGHT

1 - 6. Paragraphs 1 through 6 of Count Seven are hereby made Paragraphs 1 through 6, respectively, of Count Eight.

WHEREFORE the plaintiff claims judgment against the defendant Chenacki for compensatory damages, punitive damages, attorney fees and costs.

THE PLAINTIFF

BY 

JOHN R. WILLIAMS (#67962)

51 Elm Street

New Haven, CT 06510

(203) 562-9931

Fax: (203) 776-9494

jrw@johnrwilliams.com

His Attorney

RETURN: SEPTEMBER 16, 2014

NICHOLAS CRISMALE

VS.

CHRISTOPHER ANDREW WALSTON,
JEFFREY SAMORAJCZYK and
TODD AARON CHENACKI

SUPERIOR COURT

J. D. OF NEW HAVEN

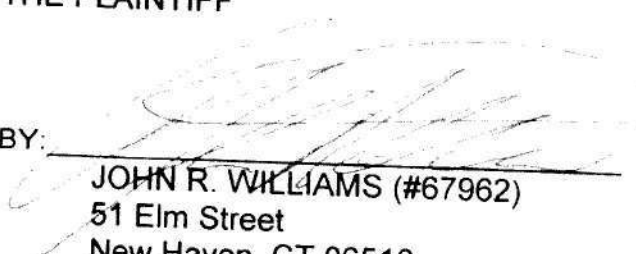
AUGUST 11, 2014

PRAYER FOR RELIEF

The plaintiff claims judgment in an amount greater than fifteen thousand dollars (\$15,000.00), exclusive of interest and costs

THE PLAINTIFF

BY:


JOHN R. WILLIAMS (#67962)

51 Elm Street

New Haven, CT 06510

(203) 562-9931

Fax: (203) 776-9494

jrw@johnrwilliams.com

His Attorney

DOCKET NO.: NNH-CV-14-6049358-S	:	SUPERIOR COURT
NICHOLAS CRISMALE	:	J.D. OF NEW HAVEN
VS.	:	AT NEW HAVEN
CHRISTOPHER WALSTON	:	MARCH 2, 2016

CHRISTOPHER WALSTON'S ANSWER and SPECIAL DEFENSES

COUNT ONE:

1. The defendant has not any knowledge or information sufficient to form a belief.
2. Admitted.
3. The defendant admits the first sentence. The defendant has not any knowledge or information sufficient to form a belief as to the second sentence.
4. Denied.
5. Based upon information and belief, the defendant admits that "the plaintiff was arrested and prosecuted on criminal charges", has not any information sufficient to form a belief as to whether the plaintiff "incurred economic losses associated with his defense" and "also suffered humiliation and anxiety" and denies the balance of said paragraph.
6. Admitted.
7. The defendant has not any knowledge or information sufficient to form a belief.

COUNT TWO:

1. The defendant has not any knowledge or information sufficient to form a belief.
2. Admitted.

3. The defendant admits the first sentence. The defendant has not any knowledge or information sufficient to form a belief as to the second sentence.
4. Denied.
5. Based upon information and belief, the defendant admits that "the plaintiff was arrested and prosecuted on criminal charges", has not any information sufficient to form a belief as to whether the plaintiff "incurred economic losses associated with his defense" and "also suffered humiliation and anxiety" and denies the balance of said paragraph.
6. Admitted.
7. The defendant has not any knowledge or information sufficient to form a belief.

COUNT THREE:

This count is not addressed to this defendant; therefore this defendant does not plead to this count.

COUNT FOUR:

This count is not addressed to this defendant; therefore this defendant does not plead to this count.

COUNT FIVE:

This count is not addressed to this defendant; therefore this defendant does not plead to this count.

COUNT SIX:

This count is not addressed to this defendant; therefore this defendant does not plead to this count.

COUNT SEVEN:

This count is not addressed to this defendant; therefore this defendant does not plead to this count.

COUNT EIGHT:

This count is not addressed to this defendant; therefore this defendant does not plead to this count.

SPECIAL DEFENSE (as to Counts One and Two):

If the Defendant, Walston, made any statements about the Plaintiff, as alleged in Paragraphs 4 and 6 of Counts One and Two, then they are privileged statements. The statements, as alleged by the Plaintiff in Paragraphs 4 and 6 of Counts One and Two, were made in in good faith, without malice, in an honest belief in the truth of the statement, and in discharge of a public or private duty.

If the Defendant, Walston, made any statements about the Plaintiff, as alleged in Paragraph 6 of Counts One and Two are privileged because they were opinion of an outcome based on a true fact, i.e., that the Plaintiff was arrested.

SPECIAL DEFENSE (as to Count Two):

If the Defendant, Walston, made any statements about the plaintiff to law enforcement officers, the Defendant acted lawfully and with probable cause under the existing

circumstances. The Defendant acted without malice and acted with the intent to bring the plaintiff-offender to justice. The Defendant utilized the proper legal channels to report his complaint against the plaintiff.

The Defendant,

By 

Christian Sterling, His Attorney
Katz and Seligman
130 Washington Street
Hartford, CT 06106
Tel. (860) 547-1857
Fax (860) 241-9127
Juris No. 101040

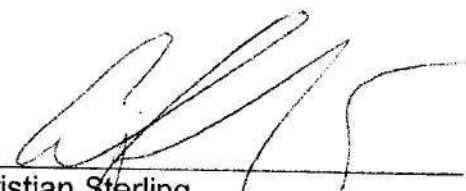
CERTIFICATION

This is to certify that a copy of the foregoing was sent to all counsel of record this 2nd day of March, 2016, as follows:

John Williams Associates LLC
51 Elm Street Suite 409
New Haven, CT 06510

Vincent Cervoni, Esq.
401 Center Street
Wallingford, CT 06492

Joseph A Jordano
AG-Civil Rights/Torts
55 Elm Street
PO Box 120
Hartford, CT 06105


Christian Sterling
Commissioner of the Superior Court

NO. NNH-CV-14-6049358-S

NICHOLAS CRISMALE

VS.

CHRISTOPHER ANDREW WALSTON,
JEFFREY SAMORAJCZYK and
TODD AARON CHENACKI

SUPERIOR COURT

J. D. OF NEW HAVEN

MARCH 3, 2016

ANSWER TO SPECIAL DEFENSES OF DEFENDANT WALSTON

The allegations of defendant Walston's Special Defenses are denied.

THE PLAINTIFF

BY: /s/ (#067962)
JOHN R. WILLIAMS (#67962)
51 Elm Street
New Haven, CT 06510
(203) 562-9931
Fax: (203) 776-9494
jrw@johnrwilliams.com
His Attorney

CERTIFICATION OF SERVICE

On the above date, copies hereof were sent to Katz & Seligman, P.C., 130 Washington Street, Hartford, CT 06106, 860-241-9127, csterling@katzandseligman.com; Vincent Cervoni, Esq., 221 North Main Street, Wallingford, CT 06492, 203-284-5002, vinny@attorneycervoni.com; and Joseph A. Jordano, Assistant Attorney General, P. O. Box 120, Hartford, CT 06105, 860-808-5084, joseph.jordano@ct.gov

/s/ (#067962)
JOHN R. WILLIAMS

DOCKET NO.: NNH-CV14-6049358S

:

SUPERIOR COURT

NICHOLAS CRISMALE

:

J.D. OF NEW HAVEN

VS.

:

AT NEW HAVEN

CHRISTOPHER WALSTON, et. al.

:

MARCH 7, 2016

MOTION FOR SUMMARY JUDGMENT

Pursuant to Practice Book § 17-44, the Defendant, Christopher Walston, moves the court, for the entry of summary judgment on Counts One and Two of the Plaintiff's Complaint, on the ground that no genuine issue of material fact exists and he is entitled to judgment as a matter of law.

Walston moves as to Count One on the ground that there is no genuine issue of material fact and that as a matter of law the first of the allegedly slanderous statement is privileged because it is subject to qualified immunity and was not made with malice and the second allegedly slanderous statement is privileged and does not qualify as defamation since the statement was an opinion and statements of opinion are *not* considered slanderous.


Walston moves as to Count Two on the ground that there is no question of material fact that he did not initiate or procure the institution of criminal proceedings against the plaintiff, he acted with probable cause, and there was no malice.

In support of his motion, Walston submits the attached memorandum of law, affidavit from Walston (**Exhibit A**), the plaintiff's 12/24/14 responses to interrogatories and requests for production (**Exhibit B**), affidavits from Samorajczyk and Chenacki (**Exhibit C and D**)

deposition excerpts from witnesses, Bertrand, Avila and Maynor (**Exhibit E, F and G**) and deposition excerpt from Crismale (**Exhibit H**).

Walston moves that the court grant his motion for summary judgment as he is entitled to summary judgment as a matter of law because the undisputed facts show that he is not, and cannot be, liable for any of the plaintiff's injuries or damages.

The Defendant,



Christian A. Sterling, His Attorney
Katz & Seligman
130 Washington Street
Hartford, CT 06106
Tel. (860) 547-1857
Fax (860) 241-9127
Juris No. 101040

ORDER

After hearing had, it is hereby ORDERED that the above motion be

GRANTED / DENIED

By the Court

Judge/ Clerk/ Assistant Clerk

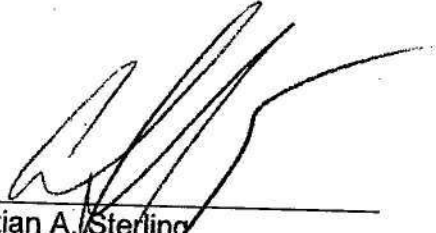
CERTIFICATION

This is to certify that a copy of the foregoing was sent to all counsel of record this 7th day of March, 2016, as follows:

John Williams Associates LLC
51 Elm Street Suite 409
New Haven, CT 06510

Vincent Cervoni, Esq.
401 Center Street
Wallingford, CT 06492

Joseph A Jordano
AG-Civil Rights/Torts
55 Elm Street
PO Box 120
Hartford, CT 06105



Christian A. Sterling
Commissioner of the Superior Court

DOCKET NO.: NNH-CV14-6049358S

:

SUPERIOR COURT

NICHOLAS CRISMALE

:

J.D. OF NEW HAVEN

VS.

:

AT NEW HAVEN

CHRISTOPHER WALSTON, et. al.

:

MARCH 7, 2016

**CHRISTOPHER WALSTON'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION
FOR SUMMARY JUDGMENT**

FACTS:

The moving defendant, Christopher Walston, incorporates and relies upon the undisputed material facts found in the November 10, 2015 motion for summary judgment, filed by the co-defendants, Jeffrey Samorajcyk and Todd Chemacki, into this memorandum of law.

The plaintiff, Nicholas Crismale, has filed a lawsuit against Walston sounding in slander (Count One) and malicious prosecution (Count Two). On March 2, 2016, Walston filed an answer with special defenses. On March 3, 2016, Crismale replied to the special defenses.

Walston moves for summary judgment on Count One because there is no question of material fact that the first of the allegedly slanderous statement is privileged because it is subject to qualified immunity and was not made with malice and the second allegedly slanderous statement is privileged and does not qualify as defamation since the statement was an opinion and statements of opinion are *not* considered slanderous.

Walston moves for summary judgment on Count Two because there is no question of material fact that he did not initiate or procure the institution of criminal proceedings against the plaintiff, he acted with probable cause, and there was no malice.

LAW:

A. STANDARD FOR SUMMARY JUDGMENT

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the Trial Court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law. . . . The test is whether the party moving for summary judgment would be entitled to a directed verdict on the same facts." (Internal quotation marks omitted.) *Mazurek v. Great American Ins. Co.*, 284 Conn. 16, 26-27, 930 A.2d 682 (2007).

"A motion for summary judgment is properly granted if it raises at least one legally sufficient defense that would bar the plaintiff's claim and involves no triable issue of fact." (Internal quotation marks omitted.) *Rosato v. Mascardo*, 82 Conn. App. 396, 400, 844 A.2d 893 (2004).

"The opposing party must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact." *Hertz Corp. v. Federal Ins. Co.*, 245 Conn.

374, 381, 713 A.2d 820 (1998). "Mere statements of legal conclusions or that an issue of fact does exist are not sufficient to raise the issue. . . . It is not enough that one opposing a motion for summary judgment claims that there is a genuine issue of material fact; some evidence showing the existence of such an issue must be presented in the counter affidavit." (Citations omitted.) *Stokes v. Lyddy*, 75 Conn. App. 252, 257, 815 A.2d 263 (2003).

ARGUMENT:

A. COUNT ONE

Defamation is comprised of the torts of libel and slander Slander is oral defamation Libel . . . is written defamation. *Gambardella v. Apple Health Care, Inc.*, 86 Conn. App. 842, 850 (2005). "A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.... To establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." *Hopkins v. O'Connor*, 282 Conn. 821, 838 (2007).

"Although there may at times be a fine line between fact pleading and evidence, defamation should be alleged with some degree of specificity." *Berte v. Haddam Hills*

Academy, Inc., Superior Court, judicial district of Middlesex, Docket No. CV 02 0097138 (December 16, 2005, *Beach J.*) (40 Conn. L. Rptr. 565).

When the defendant has established a prima facie case of privilege, it ordinarily devolves upon the plaintiff to rebut this showing by proof of actual malice, want of good faith or due care where such matters are material. 33 Am.Jur., Libel and Slander, p. 245, sec. 264. See also Restatement, 3 Torts, p. 299, sec. 613.

The plaintiff's complaint discloses two statements he claims rise to the level of slander. In Count One, ¶ 4, the plaintiff alleges "On December 14, 2011, the defendant Walston falsely and maliciously stated to the defendants Samorajczyk and Chenacki that the plaintiff was trespassing on his clam beds and stealing his clams." In Count One, ¶ 6, the plaintiff alleges: "Following the plaintiff's arrest, the defendant Walston stated to a reporter for the Hartford Courant concerning the plaintiff's arrest: 'I nailed him and I nailed him good.'" No other statements are pleaded or even claimed. See also **Exhibit B**, plaintiff's 12/24/14 responses to interrogatories and requests for production.

The statement in ¶ 4 is privileged, does not qualify as defamation, and Walston is granted immunity for the alleged statement. Based on the allegation, these words were only publicized to the defendants Samorajczyk and Chenacki, enforcement officers with the environmental police. "[S]tatements that a complaining witness makes to the police are subject to qualified immunity" *Gallo v. Barile*, 284 Conn. 459, 463 (2007). See also *Petyan v. Ellis*, 200 Conn. 243, 252 (1986).

Since a qualified immunity applies, the plaintiff must prove any statement was made with malice. See *Hassett v. Carroll*, 85 Conn. 23, 35-36 (1911). "A qualified privilege protects false statements that are not made maliciously. In other words, [a]lthough a qualified privilege insulates many defamatory statements and shields many defendants from liability, the privilege does not protect a defendant who makes statements that are both defamatory and malicious. . . . The malice required to overcome a qualified privilege in defamation cases is malice in fact or actual malice. . . . Actual malice requires that the statement, when made, be made with actual knowledge that it was false or with reckless disregard of whether it was false. . . . A negligent misstatement of fact will not suffice; the evidence must demonstrate a purposeful avoidance of the truth. . . . Malice in fact is sufficiently shown by proof that the [statement was] made with improper and unjustifiable motives. . . ." (Citations and internal quotation marks omitted) *Gallo v. Barile*, supra, 284 Conn. 464, fn. 6 (2007).

In the present case, when Walston allegedly stated that the plaintiff was trespassing on his clam beds and stealing his clams, he based it upon his own observations and attests that he had a basis to reasonably believe that the plaintiff was harvesting shellfish on Walston's lot. **Exhibit A.**

In further support of Walston's argument, Samorajczyk and Chenacki were also able to complete their own investigation and came to the same conclusion, i.e., they each believed that the plaintiff was trespassing and stealing clams, which is why they arrested the

plaintiff. **Exhibits C and D.** There is no evidence that this statement was made with actual knowledge that it was false or with reckless disregard of whether it was false.

The statement in ¶ 6 is privileged and does not qualify as defamation since the statement was an opinion and statements of opinion are *not* considered slanderous. *Goodrich v. Waterbury Republican-American, Inc.*, 188 Conn. 107, 111 (1982). A statement is considered factual when the assertions contained therein are capable of being known, whereas "an opinion . . . is a personal *comment* about another's conduct, qualifications or character that has some basis in fact." (Emphasis in the original). *Id.* "As a general rule . . . an opinion is privileged as fair comment . . . when the facts on which it is based are truly stated or privileged or otherwise known either because the facts are of common knowledge or because, though perhaps unknown to a particular recipient of the communication, they are readily accessible to him." *Id.*, 117-18, citing 1 Harper & James, *op. cit.*, § 5.28, p. 459; 3 Restatement (Second), Torts § 566. "If the facts that are criticized or commented upon are not stated or known, however, then fair comment is no defense." *Id.*, 118.

The only statement the plaintiff alleges was defamatory was a statement about the plaintiff's arrest, which was public information and already disclosed *prior* to Walston's comments, since it occurred on April 19, 2012. The fact that the plaintiff was arrested is a knowable, and true, fact. Furthermore, Walston's comment about the arrest was merely a comment of *opinion* on the outcome of arrest that actually took place; there is no dispute that the plaintiff was arrested and charged. This is no different than a witness commenting on watching a video or viewing a photograph of an alleged crime being committed and

providing an opinion on the future outcome. Walston is not alleged to have any special training in the penal code, and he he could not know how the case would proceed against the plaintiff. Thus, the statement of Walston's opinion about the arrest is clearly one of opinion and privileged and not slanderous.

B. COUNT TWO

In order to prevail on a tort claim for malicious prosecution, a plaintiff must prove the following elements: (1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff, (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice. *Zenik v. O'Brien*, 137 Conn. 592, 595 (1951).

"Actions for malicious prosecution are not favored by the courts. Thus, a malicious prosecution action is subject to limitations that are more stringent than those surrounding other kinds of actions, and recovery is allowed only if the requirements have been fully complied with." *Gallo v. Barile*, 284 Conn. 459, 475, 935 A.2d 103 (2007); 52 Am.Jur.2d 143, *supra*, § at 5.

The court should grant Walston's motion for three separate reasons.

1. The defendant did not "initiate" or "procure" the proceedings

The first element fails. In order to have "initiated" a proceeding, a citizen must do more than simply make a public official aware of possible criminal conduct. *McHale v. W.B.S. Corp.*, 187 Conn. 444, 448 (1982). "A private person can be said to have initiated a

criminal proceeding if he has insisted that the plaintiff should be prosecuted, that is, if he has brought pressure of any kind to bear upon the public officer's decision to commence the prosecution." *Id.*, citing *Fatone v. DeDomenico*, 161 Conn. 576, 577, 290 A.2d 324 (1971). "A person is deemed to have initiated a proceeding if his direction or request, or pressure of any kind by him, was the *determining factor* in the officer's (or prosecutor's) decision to commence the prosecution." (Emphasis added; internal quotation marks omitted.) *Fatone v. DeDomenico*, *supra*, 161 Conn. 577.

There appears no definition in case law for "insist", "pressure", "initiate" or "procure" in a malicious prosecution claim. In *Lefebvre v. Zarka*, 106 Conn. App. 30, 36 (2008), the court stated that "insisting" that a party be prosecuted is akin to bringing "pressure of any kind to bear upon the public officer's decision to commence the prosecution." *Id.* The party's pressure must be the determining factor in the officer's or prosecutor's decision, in order for a person to have "initiated" criminal proceedings. *Giannamore v. Shevchuk*, 108 Conn. App., 303, 317 (2008), citing *Fatone v. DeDomenico*, *supra*, 161 Conn. 577 (1971).

The Restatement (Second) of Torts distinguishes between "initiate" and "procure" so that a person may be held liable for malicious prosecution even if he did not initiate criminal proceedings. The Restatement states that "[a] person who does not himself initiate criminal proceedings may procure their institution in one of two ways: (1) by inducing a third person, either a private person or a public prosecutor, to initiate them, or (2) by prevailing upon a public official to institute them by filing an information The giving of the information or the making of the accusation, however, does not constitute a procurement of the

proceedings that the third person initiates if it is left to the uncontrolled choice of the third person to bring the proceedings or not as he may see fit." 3 Restatement (Second) Torts, § 653, comment (d) (1977). Thus, the result remains the same – a person must exert pressure on a public official in order to find that his (or her) act was the determining factor in the filing of charges. When it is the prosecutor's own decision to initiate criminal proceedings, even if based on a defendant's complaint, a defendant is only liable if he or she "induced" or pressured the public official to file charges. Otherwise he (or she) is a mere witness.

There is no evidence that the defendant in the present case did anything to pressure officers Samorajcyk and Chemacki or insist that the plaintiff be issued a ticket or prosecuted. There is no evidence that the defendant had any influence over their decision whatsoever. The plaintiff's deposition confirms this since he was issued a ticket while still on the boat and the plaintiff is unable to point to anywhere in his deposition where he confirms there was any shred of pressure placed by Walston. Nowhere in the plaintiff's deposition, or affidavits, or testimony in the criminal trial was there any evidence that Walston discussed the arrest or prosecution of the plaintiff with any town official or officer prior to the plaintiff being issued the December 14, 2011 ticket.

If Walston's conduct "initiated" anything, it was the dispatch of authorities. It was officer Samorajcyk and/or Chemacki's own independent investigation / observations and the plaintiff's admissions that led to the issuance of the ticket, *not* solely based on Walston's

actions. See Affidavits completed by Samorajcyk and Chemacki at Exhibits C and D.¹ Simply alerting the authorities and requesting assistance regarding potential poaching of shellfish does *not* constitute "initiation" of criminal proceedings.

It would require substantially more effort on the part of Walston to justify a claim of initiation or procurement of the plaintiff's prosecution. In *Brodrib v. Doberstein*, 107 Conn. 294 (1928), a seminal case on the subject, the plaintiff accused the defendant of malicious prosecution, after the defendant told police that the plaintiff had stolen awnings affixed to a building that, in fact, had been sold to the plaintiff. *Id.*, 295. The police conducted an investigation and prepared a report to the prosecutor. *Id.* The defendant met with the prosecutor about his complaint and was advised by the prosecutor that he had the option of either a civil or criminal remedy. The defendant requested that criminal charges be filed. *Id.*, 296. Thereafter a warrant was issued against the plaintiff for larceny. The charges were later dropped. *Id.*

The Supreme Court held that Doberstein was immune from suit and had not "initiated" criminal proceedings against the plaintiff. *Id.*, 299. The court stated that, even after the defendant's admission that he desired to press the criminal complaint, "[t]he responsibility for the plaintiff's arrest rested entirely upon the prosecuting attorney who reached the conclusion that the facts given him by the defendant and the police officer warranted the issuing of a warrant for the plaintiff's arrest." *Id.*, 298-99. The court reasoned

¹ According to paragraph 13 of each July 22, 2015 and August 4, 2015 affidavit of Samorajcyk and Chemacki, both officers concluded probable cause existed based on four (4) factors: Walston's reporting, personal observations, confirmation from the Bureau of Aquaculture and GPS navigation coordinates and the plaintiff's statements / admissions.

that the prosecutor, as a public official with presumably no personal interest or bias towards the parties, possessed a duty to investigate complaints and to criminally prosecute, should the facts warrant prosecution. *Id.*, 297. The ultimate decision whether or not to initiate criminal proceedings was left to the prosecutor and the prosecutor is not an agent of the complainant; rather, the prosecutor acts for the state, and a private citizen cannot be held liable for the actions of a prosecutor. *Lo Sacco v. Young*, 20 Conn. App. 6, 19 (1989).

In the present case, Walston was not involved at all in the decision to issue a ticket to the plaintiff. A defendant must do more than alert authorities to possible illegal activity in order to be held liable for initiating a criminal proceeding. *McHale v. W.B.S. Corp.*, *supra*, 187 Conn. 448 (1982). The defendant in the present case simply observed and reported what he observed to the Department of Environmental Police. **Exhibit A**. As a result of Walston's call, the police conducted their own investigation, and they made an independent decision to issue a ticket. The officers operated the state owned boat towards the plaintiff, talked to the plaintiff, used a GPS monitoring system to locate the boat(s) and called the department of Aquaculture. **Exhibits C and D**. It was based on the observations of officers Samorajcyk and Chemacki and their own investigation that the plaintiff was issued a ticket.

There is no question of material fact that Walston's actions, i.e., phone call to the environmental police, initiated or procured the institution of criminal proceedings in the present case.

2. The defendant acted with probable cause

The third element fails. The "probable cause" defense to an allegation of malicious prosecution encourages honest citizens to bring criminals to justice and "consequently the accuser must be given a large degree of freedom to make mistakes and misjudgments without being subject to liability." *Giannamore v. Shevchuk*, 108 Conn. App. 303, 310 (2008).

The "existence of probable cause is an absolute protection against an action for malicious prosecution." *Giannamore v. Shevchuk*, supra, 108 Conn. App. 311 (2008), citing *Vandersluis v. Weil*, 176 Conn. 353, 356 (1978). The issue of probable cause in a malicious prosecution claim ultimately presents a question of law that must be determined by the court. *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 94 (2007).

Probable cause is defined as "the knowledge of facts sufficient to justify a reasonable person in the belief that he or she has reasonable grounds for prosecuting an action." *Giannamore v. Shevchuk*, supra, 108 Conn. App. 312 (2008). The standard is whether a reasonable person in the position of the defendant would believe that he had grounds for prosecuting a criminal action. *Id.*, 315. Suspicion or a belief that reasonable grounds exist to prosecute a person must be based on circumstances which make the belief reasonable. *Id.*, 312.

Both federal and state courts uniformly hold that "probable cause to arrest exists when the officers have knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that

the person to be arrested has committed or is committing a crime." *Id.*, 311, citing *Mulligan v. Rioux*, 229 Conn. 716, 739 (1994), on appeal after remand, 38 Conn. App. 546 (1995). Moreover, the concept of probable cause is fluid. While it requires more than mere suspicion of wrongdoing, instead it focuses on probabilities, not "hard certainties." *Walczyk v. Rio*, 496 F.3d 139, 156 (2d Cir. 2007). The officers' reasonable conclusions based upon "probabilities" look to the factual and practical considerations of everyday life on which reasonable and prudent men act. *Id.*

Most importantly and often overlooked, the quantum of evidence required to establish probable cause to arrest need not reach the level necessary to convict. *United States v. Fisher*, 702 F.2d 372, 375 (2d Cir. 1983). See also *State v. Eady*, 249 Conn. 431, (1999).

The burden, actually, is on *the plaintiff* to prove affirmatively, by circumstances or otherwise, that the defendant had no reasonable ground for instituting the proceeding. *Giannamore v. Shevchuk*, *supra*, 108 Conn. App. 311 (2008).

Probable cause existed in the present case. Walston's affidavit confirms his familiarity with the location and conveys what he saw on December 14, 2011. Walston's affidavit confirms he based any conversation with dispatch or law enforcement officers upon his observations of the plaintiff's boat, the Mighty Maxx, in an area he knows very well and has known very well for many years. **Exhibit A.** Walston's statements made to dispatch were the facts as he knew them to be. Walston acted just as a reasonable person would in his situation, in an attempt to protect his livelihood, he called authorities to investigate. As a result of the phone call Walston placed, the authorities, Samorajcyk and Chemacki,

conducted their own investigation and they made their own determination that there was probable cause to charge Crismale.

Samorajcyk and Chemacki, the officers and co-defendants, also corroborated Walston's observations because they saw individuals on the Mighty Maxx actively harvesting shellfish, when they sidled up to the boat. **Exhibit C and D.** Employees / witnesses, Bertrand, Avila and Maynor corroborated the affidavits of Samorajcyk and Chemacki when they testified that they were actively harvesting shellfish right up to the point when the officers sidled up to the Might Maxx. **Exhibits E, F and G.** Crismale, the plaintiff, did not deny the fact that he was actively harvesting shellfish at the time the EnCONN police sidled up to his boat, but instead testified he could not recall. **Exhibit H**, p. 108; 5-13. The GPS coordinates taken at the time Samorajcyk and Chemacki arrived at the location of the Mighty Maxx confirmed that Crismale's boat was over ¼ mile off his leased lot and on the lot leased by Walston. Lastly, Crismale admitted to Samorajcyk and Chemacki that he was off his leased lot. Based upon these objective facts, it was reasonable for Walston, Samorajcyk and Chemacki to believe that probable cause existed. See *Cuadrado v. Bristol Police Dept.*, Superior Court, judicial district of New Britain, Docket No. CV 14 5015961 (April 28, 2015, *Swienton, J.*).

In *Brodrib v. Doberstein*, 107 Conn. 294 (1928), the court defined what it means for a citizen to make a complaint to a police official. If a citizen takes an active role in the prosecution or insists that criminal charges be filed and is, therefore, instrumental in initiating the criminal proceedings, the citizen may still be protected from liability for

malicious prosecution as long as the complaint was made in good faith. *Id.*, 296; see also *McHale v. W.B.S. Corp.*, 187 Conn. 444, 451 (1982) (liability depends upon whether person acted with the knowledge of facts sufficient to justify a reasonable person in the belief that there are reasonable grounds for prosecuting an action). In other words, if a citizen does make a complaint against another person, the disclosure to the police official (or prosecuting attorney) must be complete and truthful in order to be protected from civil suit. *Id.*, 448. The facts and evidence support Walston provided complete and truthful information to Samorajcyk and Chemacki.

Crismale may argue that he was simply turning the Mighty Maxx around from the west to head east and the harvesting dredge was not actively sucking shellfish from the bottom, but instead what the officers saw were residual shellfish on the conveyor belt. But even if it were true that the belt continued to run for over ¼ mile while the boat turned, there would be no way for the officers to know such information. Crismale did not suggest or explain to either Samorajcyk or Chemacki his belief that the shellfish they saw coming up the dredge were residual shellfish. **Exhibit H**, p. 83; 23-84:5). From the perspective of Samorajcyk and Chemacki, all the facts pointed to Crismale actively harvesting shellfish on Walston's lot.

Walston cannot be held liable for simply alerting the authorities to a particular situation, and accurately reporting facts. Otherwise, ordinary citizens would no longer be encouraged or feel safe reporting suspicious or disturbing activity for fear of litigation. Crismale cannot overcome his burden "to prove affirmatively, by circumstances or

otherwise, that [Walston] had no reasonable ground" for notifying the authorities. See *Stone v. Stevens*, 12 Conn. 219, 227 (1837).

3. There is no evidence the defendant acted with malice.

The fourth element fails. "In a malicious prosecution action, the defendant is said to have acted with malice if he [or she] acted primarily for an improper purpose; that is, for a purpose other than that of securing the proper adjudication of the claim on which [the proceedings] are based...." (Citation omitted; internal quotation marks omitted.) *Mulligan v. Rioux*, supra, 229 Conn. 732 (1994).

A person acts with malice when he acts either with actual knowledge that the statement is false or with reckless disregard of whether it is false. The making of a negligent misstatement is not enough to establish defamation. Instead, the evidence must show that the defendant, by his intentional or reckless conduct, engaged in purposeful avoidance of the truth. The plaintiff must prove that the defendant acted with actual malice by the heightened standard of clear and convincing evidence. *Abdelsayed v. Narumanchi*, 39 Conn. App. 778 (1995).

There is no "affirmative proof" that the plaintiff can present that Walston acted primarily for a purpose other than bringing an offender to justice. See *McHale v. W.E.S. Corp.*, supra, 187 Conn. 447 (1982). First, there is no malice because probable cause existed and therefore malice cannot be inferred when there is no probable cause. See arguments made in preceding section. Second, the plaintiff can point to nothing in his own testimony to support any malice. Third, there is no evidence that Walston acted primarily for

an improper purpose, i.e., for a purpose *other than* that of securing the proper adjudication of the claim on which the plaintiff was arrested. Walston's affidavit supports this, as he based any statement he made upon his own observations. **Exhibit A.**

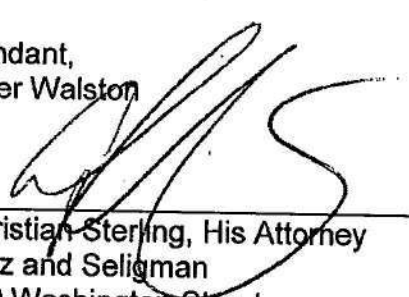
CONCLUSION:

The court should grant Walston's motion for summary judgment on Count One because there is no question of material fact that the first of the allegedly slanderous statement is privileged because it is subject to qualified immunity and was not made with malice and the second allegedly slanderous statement is privileged and does not qualify as defamation since the statement was an opinion and statements of opinion are *not* considered slanderous.

The court should grant Walston's motion for summary judgment on Count Two because there is no question of material fact that he did not initiate or procure the institution of criminal proceedings against the plaintiff, he acted with probable cause, and there was no malice.

The Defendant,
Christopher Walston

By



Christian Sterling, His Attorney
Katz and Seligman
130 Washington Street
Hartford, CT 06106
Tel.: 860-547-1857
Juris No. 101040


CERTIFICATION

This is to certify that a copy of the foregoing was mailed via first-class mail, postage prepaid, to all counsel of record, on this 1st day of March, 2016.

John Williams Associates LLC
51 Elm Street Suite 409
New Haven, CT 06510

Vincent Cervoni, Esq.
401 Center Street
Wallingford, CT 06492

Joseph A Jordano
AG-Civil Rights/Torts
55 Elm Street
PO Box 120
Hartford, CT 06105



Christian A. Sterling
Commissioner of the Superior Court

Exhibit A

DOCKET NO.: NNH-CV-14-6049358-S	:	SUPERIOR COURT
NICHOLAS CRISMALE	:	J.D. OF NEW HAVEN
VS.	:	AT NEW HAVEN
CHRISTOPHER WALSTON	:	FEBRUARY 4, 2016

AFFIDAVIT OF CHRISTOPHER WALSTON

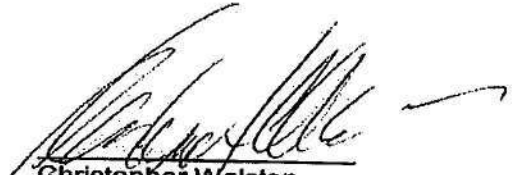
I, Christopher Walston, having been duly sworn and upon oath testify as follows:

1. My date of birth is December 4, 1975. I am over eighteen years and am a resident of the State of Connecticut.
2. I reside at 426 State Street, Guilford, CT 06437 and am the owner of C.W. Shellfish Co. LLC, a commercial shellfish business in Connecticut.
3. Along the Connecticut shore, shellfish harvesting is highly regulated. Geographical lots within Long Island Sound, including those close to the shoreline, are leased to shellfish operators within waters under municipal or state jurisdiction.
4. The leased commercial shellfish lot sizes vary and the boundaries of each leased lot area are designated by GPS coordinates associated with the corner of each lot. Each leased lot is also associated with a numerical or text identifier.
5. My shellfish business leases shellfish lot #562 in Long Island Sound.

6. I have used lot 562 for several years and am very familiar with its location from the coast of Long Island Sound off Hoadley Point in the Branford/Gulford area just south of a strip of land called "Narrows Island." (See EXHIBIT #1, a true and accurate map of the area including leased lot #562)
7. I can, and have, stood on the shore at the southern point near "Narrows Island" with binoculars and have been able to view boat activity that crosses leased lot area #562.
8. Commercial shellfishing in Connecticut is a relatively small industry. I have seen and am familiar with the two boats owned and operated by another commercial shellfisherman named Nicholas Crismale. He operates two boats through his company Mid-Sound Fisheries.
9. On December 14, 2011, I was on the shore of "Narrows Island" with binoculars looking at Long Island Sound towards lot #562. I observed a boat (Mighty Maxx) operated by Nicholas Crismale, which I observed harvesting clams on lot #562. I watched this activity on my lot for over 30 minutes.
10. Based upon my observations, I had a basis to reasonably believe that Nicholas Crismale was harvesting shellfish on my lot and I reported my belief to the Department of Environmental Police ("EnCon Police"), who monitor and enforce fishing laws in Long Island Sound.

11. When I reported my belief to the Department of Environmental Police ("EnCon Police"), who monitor and enforce fishing laws in Long Island Sound, I did so in good faith and did not do it with malice aforethought or under the belief that it was made falsely.
12. I continued to watch and eventually saw the EnCon Police arrive at the location where Crismale's boat was located and harvesting shellfish.
13. When I was interviewed by any news agency, I responded in good faith and did not, at any time, willfully, deliberately or with malice aforethought submit any false statements.

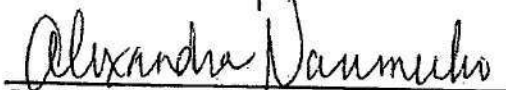
FURTHER AFFIANT SAYETH NOT


Christopher Walston

STATE OF Connecticut
COUNTY OF New Haven } ss.

2 / 17 / 2016

Subscribed and sworn to before me this 17th day of February, 2016


Commissioner of the Superior Court

ALEXANDRA NAUMENKO
NOTARY PUBLIC
STATE OF CONNECTICUT
My Commission Expires August 31, 2016

Exhibit B

NO. NNH-CV-14-6049358-S	:	SUPERIOR COURT
NICHOLAS CRISMALE	:	JUDICIAL DISTRICT OF NEW HAVEN
VS.	:	AT NEW HAVEN
CHRISTOPHER ANDREW WALSTON,	:	
JEFFREY SAMORAJCZYK and	:	
TODD AARON CHENACKI	:	DECEMBER 24, 2014

**PLAINTIFF'S RESPONSE TO DEFENDANT CHRISTOPHER WALSTON'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

INTERROGATORIES

1. Do you claim that the defendant, Christopher Walston spoke defamatory words or made defamatory statements which injured your reputation?

ANSWER:

Yes

2. If your response to Interrogatory #1 is in the affirmative, specifically state the defamatory statements or words made by the defendant, Christopher Walston which you claim, constitute slander.

ANSWER:

On April 19, 2012 Christopher Walston stated "Crismale is stealing from me...He's a Ponder and a Thief....I nailed him and I nailed him good."

3. With respect to each statement identified in interrogatory #2, state how each statement injured your reputation

ANSWER:

Compromised my integrity and credibility as an industry leader. As well as a representative of the industry at both state and federal level.

4. With respect to paragraph #4 of Count One of your complaint:
 - a) State the factual basis of your allegation that said statement(s) was/were false.
 - b) State the factual basis of your allegation that said statement(s) was/were malicious.

ANSWERS:

- a. Adjudication in Superior Court on March 17-19, 2012
- b. Statement made to Hartford Courant on Mach 10, 2014 "I nailed him and I nailed him good."

5. Are you claiming that the defendant, Christopher Walston made defamatory statements about you which caused you to sustain damages? If so, state each damage which you claim you sustained as a result of said defamatory.

ANSWER:

My reputation, character, credibility and integrity have all been compromised. Family embarrassment in town, and State relationships. Embarrassment throughout the shellfish and lobster industries. Publicized in news media as thief and poacher. Publicity referred to as a poacher and town meetings subject on constant embarrassing jest from friends.

6. Are you claiming the defendant, Christopher Walston made defamatory statements about you which caused you to sustain compensatory or special damages?

If so, state each compensatory or special damage which you claim you sustained as a result of said defamatory.

ANSWER:

Many sleepless nights
Loss of Income due to court appearances
Legal representation expenses
Loss of business relationships and income
Criminalized my name with local and state enforcement agencies
Destroy relationship with partner

7. With respect to the claim for compensation alleged in your complaint, state what you claim by way of punitive damages, specifically an itemization and breakdown of the amount claimed and what each amount represents.

ANSWER:

Attorney fees and costs over \$12,000.00;
Loss of fishing work 8 days @ \$1,500.00 a day = \$12,000.00;
Character, integrity, loss of ability to represent industry and my company ;
Ruination of my character and name.

8. With respect to paragraph #8 of Count One of your complaint, state specifically what "economic losses" you sustained and the amount of each economic loss and a breakdown and itemization and explanation of each loss.

ANSWER:

See my previous response

9. With respect to paragraph #8 of Count One of your complaint, state specially what "humiliation" you sustained.

ANSWER:

Media, personal relationships with industry representatives, state regulators, enforcement agencies, in the towns in which I live and where my business is located. At shell fish commission meetings in Branford & Guilford where I've been called a "Poacher". Embarrassment to my family that live in the town. Constant negative remarks from peers.

10. With respect to paragraph #8 of Count One of your complaint, state specifically what "anxiety" you sustained.

ANSWER:

Anxiety in the presence of state officials during meetings. Constant leverage to commit to programs that the state wanted to implement as part of the deal. Loss of my license and inability to pay my bills and liabilities. The thought of being called a "Thief".

11. With respect to your claim for anxiety as specified in interrogatory #10, did you treat with any healthcare provider, doctor, psychiatrist, or psychology? If so, state the name and address of the person you treated with and all dates of treatment.

ANSWER:

No

12. Prior to 12/14/2011, did you ever treat with any person for anxiety or depression? If so, state the name and address and all dates of treatment and reason for said treatment.

ANSWER:

No

13. State the name(s) and address(es) of each expert witness you intend to call to testify at the time of trial.

ANSWER:

At this point in the proceedings trial witnesses have not been contemplated, therefore they cannot be listed here.

14. With respect to each expert identified in interrogatory #13;

- a) State the field of expertise of each expert.
- b) State the subject matter on which each expert is expected to offer expert testimony;
- c) State each expert opinion to which the witness is expected to testify to;
- d) State the substance of the ground or basis of each expert opinion;
- e) Identify all materials obtained, created, and/or relied upon by the expert in connection with rendering his/her opinions in this case.

ANSWERS:

a.- e. N/A

15. Identify each document that you plan to offer into evidence in lieu of expert testimony.

ANSWER:

Attached but not limited

16. On December 14, 2011, state the name and address of the registered owner of the boat/vessel named the "Mighty Maxx."

ANSWER:

Mid State Shellfish, LLC
105 Foxon Road
East Haven, CT 06513

17. On December 14, 2011, state the name and address of the registered owner of the boat/vessel named the "Proud Mary."

ANSWER:

Mid State Shellfish, LLC
105 Foxon Road
East Haven, CT 06513

18. On December 14, 2011, state whether you were on boat/vessel named the "Mighty Maxx."

- a) If so, state the period of time you were on said boat/vessel;
- b) If so, state whether you were on said boat/vessel around 11:40 a.m.

ANSWERS:

a.-b. Yes, from approximately 6:00 a.m. till 2:00 p.m.

PRODUCTION

1. Provide all documents, materials, papers, and information which supports you claims for damages stated in interrogatory #5.

RESPONSE:

Attached

2. Provide all documents, materials, papers, and information which supports you claims for damages stated in interrogatory #6.

RESPONSE:

Attached

3. Provide all documents, materials, papers, and information which supports you claims for damages stated in interrogatory #7.

RESPONSE:

Attached

4. Provide all documents, materials, papers, and information which supports you claims for damages stated in interrogatory #8.

RESPONSE:

Attached

5. With respect to interrogatory #11, provide all medical records and reports with respect to the person(s) you treated with.

RESPONSE:

N/A

6. With respect to interrogatory #12, provide all medical records and reports with respect to the person(s) you treated with.

RESPONSE:

N/A

7. With respect to interrogatory #14, provide all the materials, documents, records, reports, and information each expert relied upon with respect to his/her opinion(s).

RESPONSE:

To be provided

8. With respect to interrogatory #15, provide copies of all said documents.

RESPONSE:

To be provided

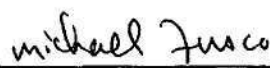
VERIFICATION

I, Nicholas Crismale, hereby certify that I have reviewed the above interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief.



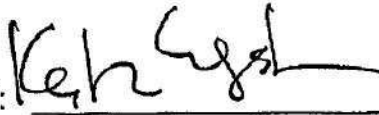
Nicholas Crismale

Subscribed and sworn to before me this 24th day of December, 2014



✓ NOTARY PUBLIC/ COMMISSIONER
OF THE SUPERIOR COURT
Exp: 1-31-2015

THE PLAINTIFF

BY: 

KATRENA ENGSTOM
John R. Williams and Associates, LLC
51 Elm Street, Suite 409
New Haven, CT 06510
(203) 562-9931
FAX: (203) 776-9494
Juris No. 102746

CERTIFICATION OF SERVICE

On the above date a copy of the foregoing was mailed, prepaid, first class to:

James A. Armentano, Esq.
Law Offices of Katz and Seligman
130 Washington Street
Hartford, CT 06106

Vincent Cervoni, Esq.
401 Center Street
Wallingford, CT 06492

Joseph A. Jordano, Esq.
55 Elm Street
P.O. Box 120
Hartford, CT 06105


KATRENA ENGSTOM

Exhibits

C & D

DOCKET NO. NNH-CV-14-6049358-S

NICHOLAS CRISMALE
Plaintiff,

v.

CHRISTOPHER WALSTON,
ET AL
Defendants.

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW HAVEN
AT NEW HAVEN

AUGUST 4, 2015

AFFIDAVIT OF TODD CHEMACKI

I, TODD CHEMACKI, having been duly sworn and upon oath testify as follows:

1. I am over eighteen years old and reside in the State of Connecticut.
2. I am currently employed as a sworn police officer for the Connecticut Department of Energy and Environmental Protection (hereinafter "DEEP") within the Division of Environmental Conservation Police (hereinafter the "Encon Police"). I have served as an Encon Police Officer since 1999.
3. The Encon Police enforce the shellfishing laws along the Connecticut coast on Long Island Sound.
4. On December 14, 2011, Encon Police Officer Samorajczyk and I responded in uniform by police boat from the Old Lyme DEEP Marine Headquarters to a complaint that had been made through DEEP dispatch regarding commercial shellfishing in the proximity of the town lines of Branford and Guilford, Connecticut, on the waters of Long Island Sound.
5. Upon reaching the area of Branford and Guilford on Long Island Sound waters, I saw a boat that appeared to be a commercial shellfishing vessel and approached it. The boat

was the "Mighty Maxx," and it was actively harvesting shellfish. More specifically, I saw the vessel's dredge in the water, pulling up clams on a conveyer belt and workers engaged in activity in the sorting area.


6. I observed that the "Mighty Maxx" was being operated by Nicholas Crismale, an owner of Mid-Sound Fisheries.
7. The police boat has a GPS navigation system. As we pulled alongside the "Mighty Maxx" vessel, I recorded the GPS coordinates of our current location identified on our police boat's GPS navigation system.
8. I observed another commercial shellfishing vessel in the area to the east of our location, so I left Officer Samorajczyk on the "Mighty Max" in order to approach the other vessel, ascertain its identity, and to determine whether it was also actively engaged in commercial shellfishing. After approaching the other vessel and collecting its information, I returned to the "Mighty Maxx."
9. Upon my return to the "Mighty Maxx," I contacted by telephone the Bureau of Aquaculture within the Department of Agriculture, and provided the GPS coordinates I had taken down for the location of our police boat alongside the "Mighty Maxx."
10. Based upon the GPS coordinates I provided, staff at the Bureau of Aquaculture advised me that the Mighty Maxx was on lot number 562, which was leased by Christopher Walston. I conveyed this information to Officer Samorajczyk.
11. Officer Samorajczyk informed me that Crismale had admitted to being off his leased lot and that Crismale was unable to produce his commercial shellfish license upon request.
12. Those engaged in the act of shellfish harvesting are required pursuant to CGS § 26-192c to hold a license from the Department of Agriculture to engage in such activity. They are

also required to keep such license on board the vessel while engaged in such activity, as noted on the license.

13. I concluded that probable cause existed that Crismale had engaged in activity in violation of CGS § 26-192c and § 53a-125, based upon the following facts and circumstances: (a) Walston's complaint; (b) my observations of the "Mighty Maxx's" active harvesting of shellfish when Officer Samorajczyk and I approached the vessel on December 14, 2011; (c) the notification provided by the Bureau of Aquaculture through my communication with Aquaculture staff that the "Mighty Maxx" was on lot number 562 leased by another individual based upon our police boat's GPS navigation system coordinates; and (d) Crismale's admission to Officer Samorajczyk while he was on board the "Mighty Maxx" that Crismale was off his leased lot.


TODD CHEMACKI

Subscribed and sworn before this 4th of August, 2015.


Commissioner of the Superior Court
Melinda H. Decker

DOCKET NO. NNH-CV-14-6049358-S

NICHOLAS CRISMALE

Plaintiff,

v.

CHRISTOPHER WALSTON,
ET AL

Defendants.

SUPERIOR COURT

JUDICIAL DISTRICT OF
AT

JULY 22, 2015

AFFIDAVIT OF JEFFREY SAMORAJCZYK

I, JEFFREY SAMORAJCZYK, having been duly sworn and upon oath testify as follows:

1. I am over eighteen years old and reside in the State of Connecticut.
2. I am currently employed as a sworn police officer for the Connecticut Department of Energy and Environmental Protection (hereinafter "DEEP") within the Division of Environmental Conservation Police (hereinafter the "Encon Police). I have served as an Encon Police Officer since 1999.
3. The Encon Police enforce the shellfishing laws along the Connecticut coast on Long Island Sound.
4. On December 14, 2011, I received a complaint through the DEEP dispatch regarding commercial shellfishing in the proximity of the town lines of Branford and Guilford, Connecticut, on the waters of Long Island Sound.
5. I contacted by telephone the complainant, Christopher Walston, who advised me that he leases shellfish lot number 562 in Guilford and that two commercial shellfish vessels were actively harvesting clams on his lot. According to Walston, the two vessels were owned by Nicholas Crismale.

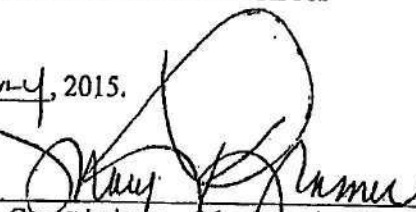
6. Encon Police Officer Todd Chemacki and I responded in uniform by police boat from the Old Lyme DEEP Marine Headquarters. At 11:40 AM, I observed the "Mighty Maxx" vessel, CT registration 2091BE, actively harvesting shellfish. More specifically, I saw the vessel's dredge in the water, pulling up clams on a conveyer belt and workers sorting the clams.
7. As the police boat Officer Chemacki and I were on pulled alongside the vessel, I observed that the "Mighty Maxx" was being operated by Nicholas Crismale, owner of Mid-Sound Fisheries.
8. The police boat has a GPS navigation system. As we pulled alongside the "Mighty Maxx" vessel, Officer Chemacki recorded the GPS coordinates identified on our police boat's GPS navigation system.
9. The "Proud Mary," also registered to Crismale, was off to the east of our location, and also harvesting shellfish, so Officer Chemacki left me on the "Mighty Maxx" and drove to the "Proud Mary."
10. When I was aboard the "Mighty Maxx," I noticed several bags of hard clams sorted and stacked. I asked Crismale where he was harvesting and he responded "Lot number 44." Then I asked him if we were currently on lot number 44, and he replied, "I'm off." When asked how far off lot number 44 we were, Crismale replied "A couple hundred feet." Three of Crismale's workers were nearby when this discussion occurred.
11. Those engaged in the act of shellfish harvesting are required pursuant to CGS § 26-192c to hold a license from the Department of Agriculture to engage in such activity. Persons engaged in the act of shellfish harvesting are also required to keep such license on board.

the vessel, as noted on said license. Crismale was unable to produce his commercial shellfish license upon my request while on board the "Mighty Maxx."

12. While on site, Officer Chemacki communicated to me that he had made contact with the Bureau of Aquaculture (within the Department of Agriculture) concerning the location of the "Mighty Maxx" and its activities. Based upon the information exchanged between Officer Chemacki and Aquaculture staff concerning the vessel's location and activities, "Mighty Maxx" was found to be harvesting clams on lot number 562, not lot number 44.
13. I concluded that probable cause existed that Crismale had engaged in activity in violation of CGS § 26-192c and § 53a-125, based upon the following facts and circumstances: (a) Walston's complaint; (b) my observations of the "Mighty Maxx's" active harvesting of shellfish when Officer Chemacki and I approached the vessel on December 14, 2011; (c) the notification provided by the Bureau of Aquaculture through Officer Chemacki that the "Mighty Maxx" was on lot number 562 rather than on lot number 44 based upon our police boat's GPS navigation system coordinates; and (d) Crismale's admission to me while we were on board the "Mighty Maxx" that he was off his leased lot.


JEFFREY SAMORAJCZYK

Subscribed and sworn before this 22nd of July, 2015.


Commissioner of the Superior Court

Notary Public
my Comm. exp. 8/28/2018

Exhibits

E, F & G

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

Judicial District
of New Haven
at New Haven

Docket No.:
NNH-CV-14-6049358-S
April 28, 2015

DEPOSITION OF HECTOR AVILA

Taken before Kristine A. Paradis, LSR 338, a Court Reporter and Notary Public within and for the State of Connecticut, pursuant to Notice and the Connecticut Practice Book, at the Office of the Attorney General, 55 Elm Street, Hartford, Connecticut, on April 28, 2015, commencing at 10:50 a.m.

FALZARANO COURT REPORTERS, LLC
4 Somerset Lane
Simsbury, Connecticut 06070
860.651.0258
info@falzaranocourtreporters.com

1 (In the absence of Ms. Longo-McLean:)

2
3 (Deposition commenced: 10:50 a.m.)
4

5 JOSE R. GAZTAMBIDE, Ph.D.,
6 Interpreter, of Interpreters &
7 Translators, Inc., 263 Main Street,
8 Manchester, Connecticut 06042, being
9 first duly sworn by the Notary Public,
10 interpreted as follows:
11

12 HECTOR AVILA, Deponent, of
13 61 Atwater Street, 2nd Floor, New Haven,
14 Connecticut 06513, being first duly
15 sworn by the Notary Public, was examined
16 and testified, through the interpreter,
17 on his oath, as follows:
18

19 DIRECT EXAMINATION
20

21 BY MR. JORDANO:

22 Q Good morning, Mr. Avila. My name is Joe
23 Jordano, and I work for the Attorney General here
24 in Connecticut, and I'm going to ask you some
25 questions today.

1 in the morning.

2 BY MR. JORDANO:

3 Q All four of you left on the boat at that
4 time?

5 A Yes.

6 Q And did you have any clams on the boat
7 when you left the dock?

8 A No.

9 Q All right. And was the purpose that day
10 to go out and harvest?

11 A Yes, to harvest.

12 Q So, you were not transplanting that day?

13 A No.

14 Q All right. And did Mr. Crismale drive
15 the boat out to where you were to begin
16 harvesting?

17 A Yes.

18 Q Now, to harvest, did the boat continue
19 to move along with the dredge in the water?

20 A Yes.

21 Q So, when you got to the place to
22 harvest, did Mr. Crismale tell you or someone else
23 to lower the dredge?

24 A No, he takes care of that himself.

25 Q All right. So, once the dredge is in

1 the water, it's turned on. Did Mr. Crismale then
2 drive the boat around while you were harvesting?

3 A Yes.

4 Q So, he would drive it in a pattern
5 wherever it's to go so you could harvest as the
6 clams came off the belt?

7 A Yes.

8 Q And is that what you did on
9 December 14th of 2011?

10 A Yes.

11 Q And were you harvesting clams up until
12 the time the police came alongside the boat?

13 A Yes.

14 Q And did you know where the boat was in
15 terms of the lots or was that Mr. Crismale's job?

16 THE INTERPRETER: I'm sorry, in
17 terms of the lots?

18 MR. JORDANO: In terms of the
19 leased lots.

20 THE WITNESS: When we arrive to
21 work in the morning, there are buoys on
22 the -- around his area. And that's
23 where we were. But when we start to
24 harvest, we don't really see where we
25 are because we are busy picking up the

1 Q And on December 14th of 2011 when you
2 began harvesting, when the dredge was put in the
3 water, the entire time until the police came, were
4 you harvesting?

5 A Yes.

6 Q All right. And then at some point you
7 noticed the police come up alongside the boat?

8 A Yes. Normally to have lunch we stop the
9 belt. We stop the dragging. Any opportunity that
10 the belt is stopped, we stand up.

11 Q Was the belt operating, were you
12 harvesting at the time the police came up?

13 A Yes. At that moment the belt was
14 stopped.

15 Q When the police arrived?

16 A Yes. Because they got very close. And
17 when somebody gets close to the boat, you have to
18 stop the belt.

19 Q All right. So, you were harvesting, and
20 when the police arrived or got close to your boat
21 is when the belt stopped?

22 A Yes. When the police came, the belt
23 stopped. And by the time we stood up, we already
24 saw the police on the boat.

25 Q All right. So, is it your recollection,

1 sir, that the belt was running right until the
2 police got right next to your boat or got on the
3 boat?

4 A Yes.

5 Q All right. And when the police got on
6 the boat, the belt stopped?

7 A Yes. Whenever anybody gets close, be it
8 the police or anybody else, the belt has to stop
9 because it's a very long piece of machinery and
10 it's very dangerous to have someone next to it.

11 Q Is the first time you saw the belt stop
12 harvesting is when the police were right there on
13 the boat?

14 A Yes.

15 Q Did you have your back to the police as
16 they approached?

17 A No. When I -- when they stopped, I got
18 up. I saw the police was right in front of me.
19 Because it's easy to see because that boat is so
20 low to the water and it doesn't have anything that
21 impedes your view all around. It's very open.

22 Q How close were the police when you first
23 noticed them?

24 A I don't know the exact distance, but
25 it's somewhere around from this writing pad to the

1 television on the other side.

2 Q Twenty feet?

3 A It's hard on water to determine
4 distance.

5 MR. ARMENTANO: I'll pace it out.

6 THE WITNESS: It was not that
7 exact, but it was --

8 BY MR. JORDANO:

9 Q Were they very close?

10 A It's a normal space. It's somewhere
11 between that pad and the television.

12 Q All right. All right. And as soon as
13 you saw them, when the police got close enough,
14 the belt stopped?

15 A Yes.

16 Q And Mr. Crismale was the one who had
17 stopped the belt?

18 A He does all the -- everything that has
19 to do with the boat except for the actual manual
20 labor.

21 Q All right. And when he stopped the
22 belt, did he stop the boat?

23 A No, he only stopped the belt because the
24 machine -- the motor continued working. He cannot
25 stop the boat completely because the rocks are too

1 close and the belt is too long.

2 Q All right. Did he raise the belt up --
3 when the police arrived, was the belt in the
4 water?

5 A No, then it was raised.

6 Q It was raised up? When he stopped the
7 belt, he raised it up?

8 A It's not like we were going home; he
9 just raised it to see what was going on, on the
10 belt.

11 Q Okay.

12 A The trap only gets up to the water
13 level.

14 Q All right. Right. And he did that when
15 the police arrived?

16 A Yes.

17 Q All right. And up to that point you
18 were able to take clams off the belt; they were
19 still coming up the belt?

20 A Yes, whatever was on the belt.

21 Q After the police arrived did
22 Mr. Crismale stop the boat or did he slow the
23 boat's movement so the police could get on the
24 boat?

25 A Yes. He slowed the boat so that they

1 could come aboard.

2 Q How many police officers came on the
3 boat?

4 A To tell you the truth I don't know the
5 exact number, but I'm pretty sure it was not more
6 than three, more than two.

7 Q All right. Okay. And did the boat --
8 did the police officers leave one police officer
9 on the Mighty Maxx when the other police officer
10 went to the Proud Mary?

11 A Yes.

12 Q And do you recall anything that you
13 heard the police officer say to Mr. Crismale?

14 A No, because I don't really speak much
15 English. And unless they were really speaking
16 very slowly and clearly, I would not understand.

17 Q All right. Did one officer stay on the
18 boat with Mr. Crismale?

19 A Yes.

20 Q Did the other officer who went to the
21 Proud Mary, did he come back with his boat to the
22 Mighty Maxx where you were?

23 A Yes.

24 Q Now, up to the time that the police
25 arrived were you taking clams off the belt and

1 putting them in the different baskets?

2 A Yes.

3 Q All right. Now, when the police came
4 back from the Proud Mary, did they bring anyone
5 with them from the Proud Mary to the Mighty Maxx?

6 A No.

7 Q All right. So, the other officer who
8 went to the Proud Mary, he came back by himself to
9 the Mighty Maxx?

10 A Yes.

11 Q And Mr. Crismale, he was responsible for
12 determining where the Mighty Maxx went, where the
13 boat went on the water?

14 A Yes.

15 Q While you were harvesting did
16 Mr. Crismale ever tell you to stop harvesting
17 because you were off his lot?

18 A No.

19 Q All right.

20 MR. JORDANO: We're going to take a
21 moment. I'm going to mark two exhibits.

22

23 (Defendant's Exhibits 1 and 2:

24 Marked for Identification.)

25

1 MR. JORDANO: Number 1 is this one
2 right here (indicating) of just the
3 dredge, and number 2 is the boat. I'm
4 going to use number 2 first, all right,
5 so you know the order I'm going to use
6 them; okay?

7 BY MR. JORDANO:

8 Q I'm going to show you, Mr. Avila, an
9 exhibit. It's marked Number 2. Tell me if you
10 recognize the boat in that picture.

11 A Yes.

12 Q Is that the Mighty Maxx?

13 A Except that I don't see the name. But
14 otherwise it seems like it.

15 Q Do you recognize the dredge that's
16 attached to the boat?

17 A Yes.

18 Q If that is the Mighty Maxx -- I'll
19 represent that it is -- is that the type of dredge
20 or the dredge you were using on December 14, 2011
21 when you were harvesting?

22 A Yes.

23 Q All right. Now I'm going to show you
24 what's marked as Exhibit 1. This is a picture of
25 the dredge on the Mighty Maxx; is that correct?

1 Q Are the other two people removing the
2 clams or the other debris that's not going to go
3 into the box?

4 A Yes. We both do it. The two people who
5 are sitting down, we do that. The other person
6 takes care of washing them and putting them in the
7 boxes.

8 Q That's good.

9 A Taking off the mud and so forth.

10 Q All right. Now, was that always your
11 job when you harvested?

12 A Yes.

13 Q So, when the clams came in the box,
14 would you then give the box to someone else to
15 wash them?

16 A Yes.

17 Q So I understand, the clams come up the
18 belt, right? Someone is separating the clams from
19 the other stuff?

20 A Yes.

21 Q The clams come up the belt into the box
22 that you're holding?

23 A Yes.

24 Q You then hand the box when it's filled
25 to someone else who cleans them?

1 A Normally the other person will grab the
2 box because it's too low for --

3 Q And then they get cleaned?

4 A Then he proceeds to wash; he picks the
5 smaller ones and the bigger ones and he puts them
6 in boxes.

7 Q So, each person has a special function?

8 A Yes. That's while we're still dredging
9 and harvesting. Once we finish, then we all work
10 together to do whatever needs to be done.

11 Q But at the time that the police arrived
12 at the boat on December 14, 2011, you were in the
13 harvesting process?

14 A Yes.

15 Q When the harvesting is all done, then
16 the clams need to be separated and bagged?

17 A Yes.

18 Q And are different types of clam sizes
19 used for different things?

20 A The client knows what they want.
21 There's only three kinds that we harvest. There's
22 the large one, medium, and small.

23 Q Okay. So the clams are separated out in
24 those categories, large --

25 A Yes.

1 Q Did he say anything to anyone else on
2 the boat?

3 A No.

4 Q Did you continue harvesting until
5 Mr. Crismale turned off the belt?

6 A No. When the police came, the belt was
7 stopped. When the police came, what we normally
8 do is that we get up and we get close to the motor
9 because it's warmer around there. And it was cold
10 that day. But we didn't know what was happening,
11 so we just stood there and waited.

12 Q All right. But did you tell me earlier
13 that up until the police arrived you were
14 harvesting?

15 A Yes.

16 Q The belt was moving?

17 A Yes. Until the police came.

18 Q And at some point when the police
19 arrived, the belt stopped and you went to where
20 the engine was, where it was warm?

21 A Yes. We did not have any movement until
22 the police came, and then -- we hadn't moved at
23 all.

24 Q You mean you stopped when the police
25 came and didn't move?

1 needs to go?

2 A Yes.

3 Q And in order for clams to be on the belt
4 and coming up on the belt, the dredge must be in
5 the water?

6 A Yes.

7 Q And is it possible to turn off the belt
8 but keep the dredge in the water?

9 A No. No. Not that I know. As far as I
10 know, he has to raise it.

11 Q All right. So, when the police came to
12 your boat on December 14th of 2011, you were
13 actively harvesting with the dredge in the water?

14 A Yes.

15 Q Did the police ask you for any
16 identification?

17 A No.

18 Q And at the end of each week on Monday
19 when you were paid, did Mr. Crismale keep in his
20 head how many days you had worked?

21 A No, he would look up at the book.

22 Q What book?

23 A Because every time someone gets on board
24 the boat, he has to write down on the book the
25 name of the person who came on board.

REDIRECT EXAMINATION

BY MR. JORDANO:

Q From the time you began harvesting on December 14, 2011, is it a fair statement that you continued the harvest all the time until the police arrived?

A Yes.

Q Okay. And would it take a number of hours to harvest 10 bushel crates of mixed chowder and cherrystone clams?

THE INTERPRETER: Cherrystone clams and -- I'm sorry.

MR. JORDANO: Chowder. Chowder.

THE INTERPRETER: And chowder. Chowder clams.

THE WITNESS: There are thousands and thousands that are being transplanted. And because it is a very good method that -- at least I like it, to harvest that is a matter of minutes. You're talking about a half an hour or maybe an hour. But that's working in the area where the transplanting is. But if we're working in an area that's

1 STATE OF CONNECTICUT

2 I, KRISTINE A. PARADIS, LSR 338, a Notary Public
3 duly commissioned and qualified in and for the State
4 of Connecticut, do hereby certify that pursuant to
5 Notice, there came before me on the 28th day of
6 April, 2015, the following named person, to wit:
7 HECTOR AVILA, who was by me duly sworn to testify to
8 the truth and nothing but the truth; that he was
9 thereupon carefully examined upon his oath and his
10 examination reduced to writing under my supervision;
11 that this deposition is a true record of the
12 testimony given by the witness.

13 I further certify that I am neither attorney nor
14 counsel for, nor related to, nor employed by any of
15 the parties to the action in which this deposition is
16 taken, and further, that I am not a relative or
17 employee of any attorney or counsel employed by the
18 parties hereto, or financially interested in this
19 action.

20 IN WITNESS THEREOF, I have hereunto set my
21 hand this 19th day of May, 2015.

22 Kristine Paradis
23 KRISTINE A. PARADIS, LSR #338
24 Licensed Shorthand Reporter

25 My Commission expires:
May 31, 2018

SUPERIOR COURT
DISTRICT OF NEW HAVEN
AT NEW HAVEN

COPY

NICHOLAS CRISMALE,
Plaintiff,

vs.

UNIVERSITY OF CONNECTICUT,
ET AL,
Defendants.

CV NO. 14-60493588

JUNE 4, 2015

DEPOSITION OF SANTOS BERTRAND

Taken before Christine M. Mannix,
RPR, LSR No. 00166, a Court
Reporter and Notary public within
and for the State of Connecticut,
pursuant to the Connecticut
Practice Book, held at the
offices of the Attorney General,
55 Elm Street, Hartford,
Connecticut on June 4, 2015,
commencing at 9:31 A.M.

Falzarano Court Reporters, LLC
4 Somerset Lane
Simsbury, CT 06070
info@falzaranocourtreporters.com
860.651.0258

(Deposition commenced 9:31 a.m.)

Whereupon, GUILLERMO RIVERA, an official interpreter, was sworn to translate all questions propounded to the witness in the language he understands and can speak and the answers to such questions in the English language.

Thereafter:

SANTOS BERNARD, Deponent, 105 East Pearl Street, New Haven, Connecticut, being first duly cautioned and sworn by the Notary Public was examined on his oath and testified as follows:

(Unless otherwise indicated, all answers designated "A" are through the Interpreter.)

DIRECT EXAMINATION

BY MR. JORDANO:

Q. Mr. Bertrand, my name is Assistant Attorney General Joseph Jordano. I'm going to ask you some questions today under oath. Do you understand that?

A. Yes.

Q. Do you understand the importance of being

1 Q. Was the boat you were on the Mighty Max?

2 MR. JORDANO: I'll rephrase.

3 BY MR. JORDANO:

4 Q. Did you work on the Mighty Max boat?

5 A. Yes.

6 Q. Did you ever work on the Proud Mary?

7 A. Which one is the Proud Mary?

8 Q. You don't recall working on a different
9 boat?

10 A. I would go sometimes on a white boat, but I
11 didn't know what the name of it was. It was his own
12 boat.

13

14 (Defendant's Exhibit 1:
15 Marked for Identification.)
16

17 BY MR. JORDANO:

18 Q. I'm showing you, Mr. Bertrand, Exhibit 1.
19 Do you recognize that boat as the boat you worked on,
20 the Mighty Max?

21 A. This one.

22 Q. So the answer is yes?

23 A. Yes.

24 Q. Now, did you ever drive the Mighty Max or
25 did Mr. Crismale always operate the boat?

1 A. On the time or date I don't remember
2 because that was a long time ago, but I remember that
3 the police came.

4 Q. All right. You remember a date -- Was it a
5 date when you were on the boat harvesting clams that
6 the police boat came up along the Mighty Max?

7 A. Yes.

8 Q. And now, were you actively harvesting right
9 up until the point when the police came up next to the
10 boat?

11 A. Yes.

12 Q. And do you know what lot the boat was on at
13 the time the police arrived?

14 MS. ENGSTROM: I'm going to object to
15 the form.

16 MR. JORDANO: Note your objection.

17 BY MR. JORDANO:

18 Q. Go ahead. You can answer it.

19 A. No.

20 Q. So Mr. Crismale, would he drive the boat
21 and the harvesting would take place and you would
22 separate the clams?

23 A. Yes.

24 Q. And is that what you were doing on the day
25 when the police arrived and came up along the Mighty

1 Q. And was Mr. Avila with you on the boat that
2 day?

3 A. I don't know who's Avila.

4 Q. Do you know if any other workers were on
5 the boat with you that day?

6 A. Yes, there was.

7 Q. And were they also helping in the
8 harvesting of the clams?

9 A. Yes.

10 Q. So were all the workers doing the same
11 thing when the police pulled up alongside the boat?

12 A. Yes.

13 Q. And did you and the other workers just
14 stand to the side while the police spoke to
15 Mr. Crismale?

16 A. Yes. We stood up and went to the side.

17 Q. Do you recall if one police officer stayed
18 on the Mighty Max when the police officers' boat went
19 to another boat further away?

20 A. I don't remember.

21 Q. Do you remember how many police officers
22 were on the police boat?

23 A. No.

24 Q. Do you know if there was more than one?

25 A. Oh, yes, yes.

1 different angle of the Mighty Max. Do you recognize
2 that?

3 A. That is docked.

4 Q. Yes. That's the boat. That's the Mighty
5 Max boat, correct?

6 A. Yes. Yes.

7 Q. And this device in the picture, that's the
8 device that goes into the water that stirs up the bed
9 and sucks up the clams; is that correct?

10 A. Yes.

11 Q. And is it Mr. Crismale who operates that
12 device when he also operates the boat?

13 A. Yes.

14 Q. So on the date when the police came up to
15 the boat, that device was in the water harvesting
16 clams; is that correct?

17 A. Yes.

18 Q. Prior to December 14th of 2011, can you
19 tell me how long did you work a couple of days a week
20 for Mr. Crismale?

21 A. Well, like before he used to give me one or
22 two days, sometimes five days, but it was difficult.
23 Maybe that would happen up to a year.

24 Q. So you think you may have worked for him
25 sometime of each week for maybe a year?

1 A. Yes. I think so.

2 Q. I understand that you didn't work
3 full-time.

4 A. No, never, never.

5 Q. And would the Mighty Max -- when you
6 worked, would the Mighty Max always leave from the
7 same dock and go out into the Sound to do the
8 shellfishing?

9 A. I know we used to go out, but I don't know
10 where is the Sound.

11 Q. But it would leave from the same dock and
12 go out to the same area, the ocean area there?

13 A. No, we would go to different places.

14 Q. But was it always Mr. Crismale who decided
15 where to go?

16 A. Yes.

17 Q. Did you ever pick up clams when you were on
18 the boat and then take them and put them someplace
19 else in the ocean, relay them?

20 A. Yes, sometimes we were transplanting.

21 Q. So sometimes you transplanted clams?

22 A. Yes.

23 Q. And then sometimes you harvested clams to
24 take back to the dock for sale?

25 A. No. I didn't understand.

1 this yet, folks, but I'll give you a copy
2 and make sure it's scanned and sent to you
3 by e-mail.

4 Would you mark this as number 3.

5
6 (Defendant's Exhibit 3:
7 Marked for Identification.)
8

9 MR. JORDANO: This is a picture of the
10 clams that the police took on the boat and
11 the ones that were turned over that day,
12 just so you know what that is.

13 BY MR. JORDANO:

14 Q. Mr. Bertrand, I'll show you Exhibit 3 and
15 represent to you this is a photograph taken by the
16 police department that date when they stopped the
17 Mighty Max showing the different clams that were on
18 the boat that were then going to be put overboard.
19 Does that look familiar?

20 A. Yes.

21 Q. And you can see here, here's a picture
22 of -- the lower corner is a picture of the Mighty Max
23 boat. Do you see that?

24 A. Yes.

25 Q. And are these the pictures of the different

STATE OF CONNECTICUT

I, CHRISTINE M. MANNIX, RPR, LSR, a Notary Public, duly commissioned and qualified in and for the State of Connecticut, do hereby certify that pursuant to Notice there came before me on the 4th day of June, 2015, the following named person, to wit: SANTOS BERTRAND, who was by me duly sworn to testify to the truth and nothing but the truth; that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that his deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which this deposition is taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in this action.

IN WITNESS THEREOF, I have hereunto set my hand this 15th day of June, 2015.

s/s Christine M. Mannix
Christine M. Mannix, RPR, LSR
Notary Public

My Commission Expires:
June 30, 2018

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF CONNECTICUT
SUPERIOR COURT

- - - - -	x	
NICHOLAS CRISMALE,		Judicial District
Plaintiff,		of New Haven
		at New Haven
v.		
CHRISTOPHER ANDREW WALSTON,		Docket No.:
ET AL.,		NNH-CV-14-6049358-S
Defendants.		June 19, 2015
- - - - -	x	

DEPOSITION OF SANDOVAL MAYNOR

Taken before Kristine A. Paradis, LSR 338, a Court Reporter and Notary Public within and for the State of Connecticut, pursuant to Re-Notice and the Connecticut Practice Book, at the Office of the Attorney General, 55 Elm Street, Hartford, Connecticut, on June 19, 2015, commencing at 9:07 a.m.

FALZARANO COURT REPORTERS, LLC
4 Somerset Lane
Simsbury, Connecticut 06070
860.651.0258
info@falzaranocourtreporters.com

1 (Deposition commenced: 9:07 a.m.)

2
3 ELIZABETH CHAPPELL, Interpreter, of
4 RDP Translations, P.O. Box 340188,
5 Hartford, Connecticut 06134, being first
6 duly sworn by the Notary Public,
7 interpreted as follows:
8

9 SANDOVAL MAYNOR, Deponent, of
10 484 Merwin Avenue, Milford, Connecticut
11 06460, being first duly sworn by the
12 Notary Public, was examined and
13 testified, through the interpreter, on
14 his oath, as follows:
15

16 DIRECT EXAMINATION

17
18 BY MR. JORDANO:

19 Q Good morning.

20 A Good morning (in English).

21 Q My name is Joe Jordano and I'm going to
22 be asking you some questions today. I'm an
23 Assistant Attorney General and we're here on a
24 case involving -- a case brought by Mr. Crismale
25 versus the State of Connecticut.

1 A 484 Merwin Avenue, Milford, Connecticut
2 (in English).

3 Q Have you spoken to Mr. Crismale about
4 this deposition beforehand?

5 A No.

6 Q Okay. Have you spoken to anyone about
7 this deposition beforehand?

8 A No.

9 Q No?

10 A No one.

11 Q In December of 2011, were you employed
12 by Mr. Crismale or his company?

13 A Yes, I was working with him on the boat.

14 Q All right. And how long had you worked
15 with Mr. Crismale before December 14th of 2011?

16 A Before that event?

17 Q Yes.

18 A Not long because I had not worked with
19 him often, maybe three or four weeks, around a
20 month.

21 MR. JORDANO: Did he know

22 Mr. Avila, A-v-i-l-a, who also was on
23 the boat that day?

24 THE WITNESS: Well, I don't know
25 some of the names. I only know the --

1 come to some point and tell you that you were
2 going to begin harvesting?

3 A Yes, he would tell us.

4 Q All right. And he would put the device
5 in the water and the belt would start moving and
6 you would start harvesting clams?

7 A Yes.

8 Q And was that your sole responsibility
9 and job during the time you were on the boat that
10 day?

11 A Yes.

12 Q Did you know what lots, what lots the
13 boat was on when you were harvesting?

14 THE INTERPRETER: Lots?

15 MR. JORDANO: Yeah, lot, l-o-t-s,
16 lot. An area.

17 THE WITNESS: First we were in one
18 zone, then we were in another one. But,
19 you know, we wouldn't know what that
20 was.

21 BY MR. JORDANO:

22 Q It was Mr. Crismale who decided what
23 zones to be in and where to go?

24 A Yes.

25 Q Do you recall that day the police

1 The police parked there, and --

2 THE INTERPRETER: I cannot see.

3 THE WITNESS: The police parked on
4 one side and then went to the cabin to
5 talk.

6 BY MR. JORDANO:

7 Q All right. So, were you along the belt
8 on one of the sides?

9 A Yes, I was here (indicating).

10 Q And just before the police arrived, the
11 belt was running and you were taking clams off and
12 putting them in certain bags?

13 A Was putting them in boxes.

14 Q All right. Boxes.

15

16 (Defendants' Exhibit 2:
17 Marked for Identification.)

18

19 BY MR. JORDANO:

20 Q Okay. For the record, this is -- it's
21 Defendants' Exhibit 2 to Mr. Avila's deposition;
22 it's Exhibit 3 to Mr. Bertrand's deposition; and
23 now it's exhibit -- I'm sorry, wrong. All right.
24 It's Exhibit 3 to Mr. Bertrand's deposition and
25 it's Exhibit 2 to this deposition. All right?

1 Q All right. The officers told you that?

2 A Since I understand some English, I heard
3 when the officer told him to tell us to dump all
4 that.

5 Q All right. Did you see the officers
6 take pictures of the clams with a camera before
7 you were instructed to dump them overboard?

8 A Yes, they took pictures. They also took
9 pictures of us, all of us.

10 Q Did you see the police coming towards
11 the Mighty Maxx before they arrived?

12 A No. No, we didn't see them.

13 Q So, you were working, you were
14 harvesting, and all of a sudden they were there?

15 A Yes. We were working and, you know, you
16 cannot hear. And next thing you knew they were
17 there, the Coast Guard.

18 Q When the machine -- when the lift is on
19 working, does it make a lot of noise?

20 A Yes.

21 Q And all three of you, you and the other
22 two gentlemen working with Mr. Crismale, you were
23 all working harvesting clams?

24 A One was pouring water; I was putting
25 them in crates; and the other one was gathering

1 STATE OF CONNECTICUT

2 I, KRISTINE A. PARADIS, LSR 338, a Notary Public
3 duly commissioned and qualified in and for the State
4 of Connecticut, do hereby certify that pursuant to
5 Re-Notice, there came before me on the 19TH day of
6 June, 2015, the following named person, to wit:
7 SANDOVAL MAYNOR, who was by me duly sworn to testify
8 to the truth and nothing but the truth; that he was
9 thereupon carefully examined upon his oath and his
10 examination reduced to writing under my supervision;
11 that this deposition is a true record of the
12 testimony given by the witness.

13 I further certify that I am neither attorney nor
14 counsel for, nor related to, nor employed by any of
15 the parties to the action in which this deposition is
16 taken, and further, that I am not a relative or
17 employee of any attorney or counsel employed by the
18 parties hereto, or financially interested in this
19 action.

20 IN WITNESS THEREOF, I have hereunto set my
21 hand this 7th day of July, 2015.

22 Kristine Paradis
23 KRISTINE A. PARADIS, LSR #338
24 Licensed Shorthand Reporter

25 My Commission expires:
May 31, 2018

Exhibit

H

COPY

1

STATE OF CONNECTICUT
SUPERIOR COURT

- - - - - x
NICHOLAS CRISMALE, | Judicial District
Plaintiff, | of New Haven
at New Haven
v. |
CHRISTOPHER ANDREW WALSTON, | Docket No.:
ET AL., | NNH-CV-14-6049358-S
Defendants. | August 21, 2015
- - - - - x

DEPOSITION OF NICHOLAS CRISMALE

Taken before Kristine A. Paradis, LSR 338, a
Court Reporter and Notary Public within and
for the State of Connecticut, pursuant to
Re-Notice and the Connecticut Practice Book,
at the Office of the Attorney General, 55 Elm
Street, Hartford, Connecticut, on August 21,
2015, commencing at 10:15 a.m.

FALZARANO COURT REPORTERS, LLC
4 Somerset Lane
Simsbury, Connecticut 06070
860.651.0258
info@falzaranocourtreporters.com

Falzarano Court Reporters

1 (Defendant's Exhibit 1;
2 Marked for Identification.)
3

4 (Deposition commenced: 10:15 a.m.)
5

6 NICHOLAS CRISMALE, Deponent, of
7 75 Kimberly Drive, Guilford, Connecticut
8 06437, being first duly sworn by the
9 Notary Public, was examined and
10 testified, on his oath, as follows:
11

12 DIRECT EXAMINATION
13

14 BY MR. JORDANO:

15 Q Good morning, Mr. Crismale. You know
16 me. I'm Joe Jordano with the Attorney General's
17 Office and we've introduced the other people here
18 today. We're here for your deposition, as you
19 know, and we're here in the State law case that
20 you have pending against several defendants,
21 Mr. Walston and then the two DEP police officers,
22 I believe. Is that correct?

23 A Correct.

24 Q All right. And I don't have to ask you
25 if you've been deposed before because you and I

1 they're on the boat. All they know is what's
2 coming up on that boat they got to take off and
3 they've got to stack them up and do the next task.

4 Q All right.

5 A I mean, but their knowledge of the
6 mechanical workings of the boat is -- they have no
7 knowledge.

8 Q I see. And so for someone who is
9 looking at your boat out in the water, all right,
10 and they see the belt moving and people taking
11 clams off the belt, all right, would it be for --
12 would someone be able to perceive from that or
13 draw the conclusion that the boat is harvesting
14 clams?

15 A Well, first of all, I don't think
16 anybody could see that far, see that belt working
17 because the belt is contained within a framework.
18 There's no way you're going to see that belt
19 working. I mean, you can see people on the boat
20 moving. And from what distance, I don't know.

21 Q Let me ask you -- let's assume the belt
22 is moving and someone pulls right up alongside the
23 boat.

24 A Right.

25 Q And they see the belt moving, they see

1 people taking clams off the belt.

2 A All right.

3 Q All right. Would that create the
4 perception for someone that you're harvesting?

5 A Well, it might if they're unfamiliar
6 with the mechanical operation of the conveyor.

7 Q And typically how long does it take when
8 you lift it up and you have three people on the
9 boat, two working the conveyor belt, three people
10 working the conveyor belt, you have no idea how
11 long it takes in your opinion to clear the belt of
12 the clams?

13 A Well, it depends what they're doing. If
14 you've got one guy clearing the belt -- I, mean
15 there's no reason to totally clear the whole belt.
16 I mean, I can do that when they're all ready.
17 They might have been doing other tasks as far as
18 stacking clams, cleaning the boat. There's a lot
19 of shell coming up, cleaning themselves. You
20 know, they're sitting there. It depends on how
21 fast and what task they're doing to get back to
22 clear that belt.

23 Q Let's assume that all three men in this
24 case are clearing the belt, all right, looking for
25 clams. All right? That's what their job is and

1 little dialog back and forth and I recall saying
2 something to him on my boat.

3 Q What did you say to him?

4 A I said something about the coordinates
5 being wrong. He said, Well, maybe that will help
6 you out in your case.

7 Q All right.

8 A So, I remember saying that to him.

9 Q Did you tell him that you were off your
10 lot?

11 A They approached me and they said
12 something and I said -- they said something and I
13 said, "I'm off." That was my --

14 Q Did you tell them how much you thought
15 you were off?

16 A They asked me later on, right.

17 Q Did you tell them you thought you were
18 100 off?

19 A Yes, I believe I did.

20 Q In fact, were you off more than that
21 according to the GPS coordinates?

22 A Whose GPS coordinates?

23 Q The coordinates that the officers took
24 when they were there.

25 A Well, according to theirs I was.

1 Q Right.

2 A If they're valid.

3 Q At your trial did you admit that
4 according to these coordinates, you were off by a
5 quarter of a mile?

6 A No.

7 Q You didn't say that in your trial
8 testimony?

9 A I don't believe I did.

10 Q You don't believe you said that in your
11 trial testimony?

12 A I don't believe that I was off -- no, I
13 said that I was off a mile and quarter, no.

14 Q No, I didn't say a mile off. I said
15 that you were off a quarter mile. That you were a
16 quarter mile off your lot according to the
17 coordinates.

18 A I thought I was off a couple hundred
19 feet according to where I thought the coordinates
20 were that were given to me by the Department of
21 Aquaculture.

22 Q My question is: Do you recall at your
23 trial if you told them that -- if you told -- your
24 testimony was that you were off a quarter mile?
25 Did you admit that in your trial testimony that

1 years of experience, you were still a quarter
2 mile, quarter of a mile off your bed that day.

3 "Answer: That's what the coordinates
4 say.

5 "Question: So, yes?"

6 Do you remember giving that testimony?

7 A No.

8 Q All right.

9 A But if I gave it, I gave it.

10 Q All right.

11 A Maybe I was giving more credibility to
12 the coordinates that the officers gave. I'm
13 not --

14 Q But as you sit here today, sir, do you
15 have any evidence at all, any, that the
16 coordinates that the officers gave to the
17 Department of Aquaculture that appear in their
18 report were inaccurate?

19 A No.

20 Q All right. Do you have any evidence as
21 you sit here today that whatever officer locked in
22 those GPS coordinates to report to Aquaculture,
23 that that person didn't know how or was somehow
24 not capable of working the GPS device?

25 A I have no evidence, no.

1 Q All right. Are you aware, are you aware
2 of any evidence as you sit here today, sir, that
3 those coordinates, those coordinates that appear
4 on Exhibit 1, all right, that were given to the
5 Department of Aquaculture, all right, and show
6 where the boats were, the Mighty Maxx and the
7 Proud Mary, based on the lots, the lots, is
8 inaccurate?

9 A I have no evidence that they're
10 inaccurate, no.

11 Q Now, you said that you told the officer
12 that there was a problem with your coordinates?

13 A I believe I did, yeah.

14 Q Do you recall testifying at trial that
15 you didn't tell the officers anything about the
16 coordinates and you didn't speak to them at all
17 when they came on your boat?

18 A I remember having a dialogue with
19 Officer Chemacki, some -- I thought it was about
20 the coordinates. It was four years ago. I really
21 don't remember whether -- I know whatever dialogue
22 I had with either officer was extremely limited.

23 Q All right. If --

24 A If any.

25 Q If, in fact, your trial testimony was

1 that you didn't tell the officers anything about
2 the chart or about the coordinates, would you
3 dispute what you said in your trial testimony?

4 A No, I would not.

5 Q All right. So, your recollection is you
6 do admit that you told them you were off your lot
7 and you thought it was 100 feet?

8 A Yes.

9 Q That much you recall?

10 A You know, it's very difficult to judge.
11 I mean, on the water, the boat -- you know, 100
12 feet, you know, it's difficult to judge on the
13 water.

14 Q Is that significantly different than a
15 quarter mile?

16 A A quarter mile?

17 Q Yeah. I mean, is 100 feet and a quarter
18 mile a significant difference?

19 A Yes. Yes.

20 Q Did either officer tell you that they
21 were communicating or they had communicated with
22 the Department of Aquaculture to verify where you
23 were using GPS?

24 A Did they communicate that to me?

25 Q Did they?

1 Q A chart? Okay. All right.

2 A I'm not 100 percent sure, but . . .

3 Q Other than that do you recall saying
4 anything to them at all?

5 A I don't -- I don't recall, no.

6 Q So, all you recall telling them is that,
7 yes, I'm off my lot. You knew that?

8 A All I said was, "I'm off."

9 Q I'm off?

10 A I didn't say, I'm off my lot. I said,
11 "I'm off." No different than if I was traveling
12 from my dock to -- I mean, I can be off the lot as
13 long as I'm not clamming --

14 Q All right.

15 A -- or harvesting.

16 Q So, you told them you were off. And he
17 asked you how far and you said you thought about
18 100 feet?

19 A I thought, right.

20 Q That's your comment; that was what you
21 told them?

22 A Yes.

23 Q Now, did you explain to them, did you
24 say anything to them about the fact that if they
25 saw people taking clams or clams coming up on the

1 belt or that -- and the dredge in the water, that
2 the dredge really was not clamming but that these
3 were residual clams?

4 A I never had any conversation with the
5 officers regarding the operation of the boat.

6 Q Now, you served as a police officer for
7 a number of years many, many years ago; is that
8 correct?

9 A Correct.

10 Q In the '70s; is that correct?

11 A Yes.

12 Q And you went to school and you were
13 taught the different concepts, such as probable
14 cause, things like that, what that term meant?

15 A Yes.

16 Q All right. All right. Did the
17 officers -- did the officers tell you at some
18 point -- they first of all told you that there had
19 been a complaint, correct, that someone said you
20 were harvesting off your lot?

21 A I don't recall the conversation, as I
22 said. It was very, very limited.

23 Q Very limited. At some point did the
24 officers tell you that they believed they had
25 probable cause that you were harvesting off your

1 lot and they were --

2 A They never mentioned the word "probable
3 cause,"

4 Q They never did?

5 A No.

6 Q Did they tell you that they thought you
7 were in violation of the law for harvesting off
8 your lot?

9 A They didn't know where they were, and I
10 believe, in my perception, that was the reason for
11 the contact with the Department of Aquaculture.
12 They didn't know whether I was off or I wasn't off
13 until they contacted the Department of
14 Aquaculture. I believe, my perception, and when
15 they gave me their coordinates, that's when they
16 determined where I was or where I wasn't.

17 Q All right.

18 A I believe that.

19 Q All right. So, you believe that they
20 were there because of a complaint because they
21 said they were there because of a complaint; is
22 that --

23 A I don't recall if it was a complaint. I
24 mean --

25 Q Was that your perception?

1 A I don't know. They came up on me so
2 fast. I didn't know whether it was a routine
3 check. I mean, I have the Coast Guard check
4 periodically.

5 Q All right.

6 A And I mean, there have been officers
7 come up on the boat. And they came up so fast, I
8 didn't even know who they were. At first I
9 thought it was a sport fishing boat of some sort.

10 Q Did they tell you that they checked with
11 Aquaculture and they determined that you were
12 harvesting off your lot?

13 A No.

14 Q All right. They just -- they did their
15 thing and simply handed you a citation?

16 A They did whatever they did on their boat
17 with their communications and I was handed a
18 citation.

19 Q All right. Did you ask them why they
20 believed you'd violated the law?

21 A I didn't quite understand. I did
22 question them on one thing. The infraction was in
23 Guilford. If you're telling me you're on this
24 lot, how can you give me a summons for a lot on
25 Branford and the summons is issued in Guilford? I

1 they might do if they have GPS is to lock in where
2 they are when they stop and where your boat is so
3 they have a record of what the GPS says at that
4 point in time, correct?

5 A Depending upon where their boat is and
6 what their protocol is. I don't know what the
7 protocol is for these officers.

8 Q Well, was their boat always -- when they
9 were next to the Mighty Maxx when they first came
10 up, did they stay next to the Mighty Maxx before
11 the boat left and went to the Proud Mary? Was it
12 right next to the Mighty Maxx?

13 A For a time. But I don't know when they
14 took those GPS coordinates.

15 Q All right. But if the facts were they
16 took them right when they were there at the Mighty
17 Maxx, you have no evidence to dispute that, do
18 you?

19 A Well, not on the suppositional basis
20 you're giving me, no. I mean, if it's
21 supposition -- I have no reason if it is, in fact,
22 that's what happened. I have reason to -- I have
23 no factual. But --

24 Q All right. Okay. And then the boat
25 left and went over to the Proud Mary, correct?

1 A Yes.

2 Q All right. And if the testimony is that
3 the officer took the -- locked in the coordinates
4 of where the Proud Mary was when his boat was next
5 to the Proud Mary, would you have any reason to
6 dispute that?

7 A I have no reason -- no, I have no reason
8 to dispute anything anymore.

9 Q If the purpose of the officers -- if the
10 purpose of the GPS is to try to figure out where
11 the Mighty Maxx is, the best place to do that
12 would either be right -- using the police GPS to
13 do it would be right next to your boat, right?
14 That's the best place to do it?

15 A If you were going to do that, yeah.

16 Q And the same thing for the Proud Mary?

17 A Correct.

18 Q Other than the police boat stopping at
19 the Mighty Maxx when the officers boarded your
20 boat -- or did they both board your boat?

21 A I don't remember.

22 Q All right.

23 A I don't think they did --

24 Q At least one did?

25 A -- because the boat wasn't attached. I

1 your -- basically your vessel completely around
2 because you were heading west and you wanted to go
3 east; is that correct?

4 A Correct.

5 Q All right. And your testimony is you
6 don't recall if the belt was on or not during that
7 turn?

8 A I would say the belt was not on, on the
9 turn. Probably not.

10 Q Well, wait a minute. Do you know for a
11 fact it was not on or you're not sure?

12 A I don't remember.

13 Q All right. You don't remember. Okay.
14 If the belt was on, if the belt was on, would
15 there have been time for them to empty off the
16 belt if the belt was running the whole time to
17 make that turn? Because that turn apparently took
18 you a quarter of a mile off your lot to make that
19 turn. Is that a fair statement?

20 A I'd like to clarify something, if I may.
21 You keep talking about a quarter of a mile. Now,
22 you're going by the GPS coordinates, which I
23 understand, if they're correct. Bear in mind,
24 those officers came up on my boat, they were
25 there, there was something going on, there was a

1 this one here.

2

3

REDIRECT EXAMINATION

4

5 BY MR. JORDANO:

6

Q Prior to 2014 did you have any
7 involvement with Officer Chemacki? Did you have
8 any involvement with him other than that incident?

9

A Just on a friendly basis.

10

Q All right. Now, when someone calls in a
11 complaint to DEP, that complaint needs to be
12 investigated even if the officer comes out and
13 finds nothing is there, correct?

14

A Yes.

15

Q All right. So, were you aware of any
16 instances when he came out when someone had
17 complained about you and he came out and he found
18 nothing?

19

A I believe -- and it's only my
20 perception -- Officer Chemacki had investigated
21 different things as have other officers, never
22 approached me with the complaint at all, but I do
23 have complaints that were made to Officer
24 Chemacki, several other officers that weren't
25 exactly investigated as they should have been.

1 any evidence in so many words that Mr. Crismale
2 did something. And they made no arrest at all; is
3 that true?

4 A Yes. Listen, I'm very well aware of the
5 assets of the DEP. But when you send three assets
6 down with patrol cars into my yard and I got all
7 my neighbors watching at the behest or complaint
8 of this Mr. Dan Snyder and they show up three guys
9 at a time, where do you get those kind of assets?
10 I've got them on tape where they don't even have
11 an asset to respond to a complaint; they're taking
12 a guy out of Stamford or Stratford. So, you send
13 three officers. How does that look to me as an
14 individual? You pull into my yard with all these
15 assets and then you've got a gentleman across
16 watching the whole incident with binoculars. My
17 integrity is --

18 Q And this is the investigation that they
19 found no basis and didn't arrest you, correct?

20 A Right.

21 Q All right. Other than that incident,
22 any other incidents where you were involved with
23 this officer?

24 A No. Not to my knowledge.

25 Q All right. Now, with Captain

1 Samorajczyk, all right, have you ever had any
2 prior dealings with him prior to December 14th of
3 2011?

4 A Prior to that, no.

5 Q How about after that?

6 A Yes. I have him on tape.

7 Q On the CD?

8 A CD.

9 Q All right. And what is the nature of
10 those conversations?

11 A The conversation is that there's a
12 complaint about me harvesting clams in a -- where
13 I had permits to do assessments. Officer --
14 Sergeant here consequently notifies to watch me
15 coming into the harbor and make sure he doesn't
16 stop off and drop off any clams.

17 Q All right. So, you were out there to do
18 assessments, not to harvest?

19 A Yeah. That I'm not allowed to take the
20 product off the ground, which I'm totally aware
21 of.

22 Q All right. And so they were simply
23 watching to make sure that that's not what you
24 did, that you did exactly what the law says you
25 can do.

1 STATE OF CONNECTICUT

2 I, KRISTINE A. PARADIS, LSR 338, a Notary Public
3 duly commissioned and qualified in and for the State
4 of Connecticut, do hereby certify that pursuant to
5 Re-Notice, there came before me on the 21st day of
6 August, 2015, the following named person, to wit:
7 NICHOLAS CRISMALE, who was by me duly sworn to
8 testify to the truth and nothing but the truth; that
9 he was thereupon carefully examined upon his oath and
10 his examination reduced to writing under my
11 supervision; that this deposition is a true record of
12 the testimony given by the witness.

13 I further certify that I am neither attorney nor
14 counsel for, nor related to, nor employed by any of
15 the parties to the action in which this deposition is
16 taken, and further, that I am not a relative or
17 employee of any attorney or counsel employed by the
18 parties hereto, or financially interested in this
19 action.

20 IN WITNESS THEREOF, I have hereunto set my
21 hand this 10th day of September 2015.

22 Kristine Paradis

23 KRISTINE A. PARADIS, LSR #338
24 Licensed Shorthand Reporter

25 My Commission expires:
May 31, 2018

NO. NNH-CV-14-6049358-S	:	
NICHOLAS CRISMALE	:	SUPERIOR COURT
	:	
VS.	:	
	:	J. D. OF NEW HAVEN
CHRISTOPHER ANDREW WALSTON,	:	
JEFFREY SAMORAJCZYK and	:	
TODD AARON CHENACKI	:	APRIL 7, 2016

**PLAINTIFF'S OBJECTION TO DEFENDANT WALSTON'S MOTION FOR
SUMMARY JUDGMENT**

I. BACKGROUND

The plaintiff has brought an action against two state environmental police officers (DEEP) and an individual citizen, Christopher Walston ("Walston"), relating to his arrest on December 14, 2011, when Walston contacted police authorities, including the state's environmental protection police, and reported that Nicholas Crismale, the President of the Lobstermen's Association of CT, was stealing clams from Walston's Lot 562 in the Long Island Sound. (Def. Ex. A, Walston affidavit, ¶10, Ex. 1, Criminal trial transcript, Walston testimony, 3/17/14, p. 37, 39)

Walston later told the Hartford Courant that "he nailed him and he nailed him good", referring to his report of Crismale's alleged theft of clams. (Ex. 8, Hartford Courant article)

Crismale claims that he was defamed by Walston and that his actions

amounted to the tort of malicious prosecution, which led to a jury trial and finally an acquittal, in 2014.

Walston admitted he was at least 500 yards away from the plaintiff's fishing boat when he called the authorities. (Ex. 1, p. 37) He also went to the Guilford Fishing Commission the same day and repeated the allegations. (Ex. 5, Crismale dep. pps, 154-6)

II. STANDARD FOR SUMMARY JUDGMENT

"The party moving for summary judgment has the burden of showing the absence of any genuine issue of material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard." DHR Construction Co., Inc. v. Thomas J. Donnelly, 180 Conn. 430, 434, 429 A.2d 908 (1980), see also Grenler v. Comm. Of Transportation, 306 Conn. 523, 534-35 (2012).

"In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the non-moving party." Sherwood v. Danbury Hospital, 252 Conn. 193, 201, 746 A.2d 730 (2000). "In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact, but rather to determine whether any such issues exist." Nolan v. Borkowski, 206 Conn. 495, 500, 538 A.2d 1031 (1988). "The party seeking

summary judgment has the burden of showing the absence of any genuine issue [of] material facts ..." Hertz Corp. v. Federal Insurance Co., 245 Conn. 374, 381, 713 A.2d 820 (1998). "To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact." Witt v. St. Vincent's Medical Center, 252 Conn. 363, 372, 746 A.2d 753 (2000).

When passing upon a motion for summary judgment, the court must resolve any ambiguities and draw all inferences against the moving party. Appleton v. Board of Education, 254 Conn. 205, 757 A.2d 1059 (2000). The court must construe the evidence in the light most favorable to the party opposing summary judgment and deny the motion unless no construction of the evidence could support judgment in the plaintiff's favor. Suarez v. Dickmont Plastics Corp., 229 Conn. 99, 105 (1994); D.H.R. Construction Co. v. Donnelly, 180 Conn. 430, 434 (1980); Connell v. Colwell, 214 Conn. 242, 246-47 (1990).

III. ARGUMENT

A. MALICIOUS PROSECUTION

The tort of malicious prosecution is available to a Connecticut plaintiff if he believes that he has been singled out and subjected unreasonably to a criminal prosecution based primarily on a citizen's complaint or action which is

intended to achieve that result. Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP, 281 Conn. 84, 99, 912 A.2d 1019 (2007). A person making the claim is required to prove that: "(1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice." McHale v. W.B.S. Corp., 87 Conn. 444, 447, 446 A.2d 815 (1982). "A person is deemed to have initiated a proceeding if his direction or request, or pressure of any kind by him, was the determining factor in the officer's decision to commence the prosecution." Zenik v. O'Brien, 137 Conn. 592, 596, 79 A.2d 769 (1951).

In this case, defendant Walston initiated the process which led to the plaintiff's arrest. There is evidence that Walston harbored resentment against the plaintiff and was interested in causing him harm, based on his comments to The Hartford Courant and based upon his repeated calls to the state DEEP to interdict the plaintiff while he was out on Long Island Sound fishing. Several months after the call which led to the plaintiff's arrest, Walston called DEEP again. (Exs. 7 and 8)

During the criminal trial of the plaintiff, Walston admitted that he watched Crismale for an extended period of time on December 14, 2011. He testified that he saw Crismale's employees on the Mighty Maxx harvesting clams, although he estimated that he was five (5) football fields away on the shoreline. (Ex. 1, p. 37-38) He admitted that he made no effort to contact Crismale during the time period he was observing the plaintiff's activities. (Ex. 1, p. 50) Walston took a number of photographs of the Mighty Maxx. (Ex. 1, p. 52) He called the Guilford Police, he called the state, and that evening, he went to the Guilford Shellfish Commission to make a complaint about the plaintiff. (Ex. 1, p. 39, 51, Ex. 5, Crismale deposition, pps. 153-4) When contacted by the press, he stated simply that "he nailed him", referring to Nicholas Crismale, and that "he nailed him good". (Ex. 1, p. 45) This "nailed him good" statement by Walston is direct evidence of plaintiff's intent to obtain a criminal prosecution of Crismale.

Shortly after Walston's calls to the authorities on December 14, 2011, Crismale was charged with Larceny in the Fourth Degree, when DEEP officer Samorajczyk prepared and signed a "Misdemeanor Summons and Complaint". (Ex. 6) The summons was prepared by the defendant after the plaintiff had provided a reasonable explanation for his location west of his assigned fishing lot #44. The fact that DEEP had received a call from Christopher Walston on

land far distant from the plaintiff's location on the water should have been balanced against the plaintiff's explanation for his presence on the wrong fishing lot at the time the defendants arrived on the scene. (Ex. 2, Criminal Trial transcript, 3/18/14, Crismale testimony, pps. 55-59)

Defendant Samorajczyk's affidavit contains no evidence that he observed the plaintiff harvesting clams on Mr. Walston's lot. (Ex. 3) Both defendants stated that they saw the dredge on the Mighty Maxx in the water and workers sorting clams on the deck. (Ex. 3, ¶¶6, Ex. 4, ¶¶5) Neither stated that they saw clams being drawn from Lot #562.

The plaintiff denies that the dredge was in the water; he testified that his conveyor belt and the clamming operation often operated independently of the dredging for clams in the water, since it took an extended period of time to collect and package them once they had been brought up from the bottom of the Sound. (Ex. 4, ¶¶5 vs. Ex. 5, Crismale deposition, pps. 35-6) Nicholas Crismale testified at the criminal trial that he was off of his Lot #44 at the time, because he was making a turn from West to East, with the Mighty Maxx, to head back to the Eastern side of his Lot #44 when he made contact with the DEEP officers. (Ex. 2, Crismale trial testimony, pps. 58-60)

But for Walston's call on December 14, 2011, no arrest would have occurred. Walston contacted the DEEP police once again on April 19, 2012. The repetition of complaints by Walston is sufficient evidence of "bad intent" on the part of defendant Walston to raise a material issue of fact on the issue of "Procurement" of the initial arrest.

B. DEFAMATION

The plaintiff also included a defamation claim against Walston for his remarks to the Hartford Courant while the criminal case was pending against Crismale. (Ex. 8, Hartford Courant article, March 10, 2014)

Defamation is the malicious publication of a false statement concerning another which causes injury to the victim. "Publication" means bringing the false statement to the attention of at least one other person, whether orally or in writing. If a false statement concerning the plaintiff was made by a defendant to any other person, there has been publication. "Malice" does not mean hatred, spite or ill will; it means that the false statements were made in an improper and unjustifiable manner, or with improper and unjustifiable motives. A person is not excused if he claims that he had an honest belief in the truth of the statement; this does not justify the publication of false charges and does not negate malice. If the defendant made a false statement concerning the plaintiff to another

person or other persons, did so without justification, and caused the plaintiff to suffer injury as a result, the elements of a defamation claim are established. Bleich v. Ortiz, 196 Conn. 498, 493 A.2d 236 (1985). "A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him ... To establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." (Citations omitted; internal quotation marks omitted.) Cweklinsky v. Mobil Chemical Co., 267 Conn. 210, 217, 837 A.2d 759 (2004).

In general, there are two categories of libel that are actionable per se: "(1) libels charging crimes and (2) libels which injure a man in his profession and calling ... To fall within the category of libels that are actionable per se because they charge crime, the libel must be one which charges a crime which involves moral turpitude or to which an infamous penalty is attached." (Internal quotation marks omitted.) Lega Siciliana Social Club, Inc. v. St. Germaine, 77 Conn.App. 846, 853, 825 A.2d 827, cert. denied, 267 Conn. 901 (2003). "The modern view

of this requirement is that the crime be a chargeable offense which is punishable by imprisonment.” Battista v. United Illuminating Co., 10 Conn.App. 486, 493, 523 A.2d 1356 (1987), cert. denied, 204 Conn. 802, 525 A.2d 965 (1987).

Walston’s statement to the Hartford Courant reporter, that “I nailed him and I nailed him good”, is not the type of comment which falls within the scope of the limited immunity provided to citizens who make a complaint to the authorities concerning possible criminal activity. McHale v. W.B.S. Corp., 187 Conn. 444, 447 (1982) Rioux v. Barry, 283 Conn. 338, 346 (2007). It cannot also fairly be described as an opinion, exempt from a defamation claim, because it was presented as a statement of historical fact by the speaker shortly before the criminal trial began. (Ex. 8) Arguably, Walston made this statement to the press shortly before the plaintiff’s trial because he intended to damage Crismale’s reputation.

Walston’s statement to the DEEP officers on December 14, 2011, reporting the plaintiff as a thief, falls into the category of libel per se. “An accusation that one has engaged in criminal behavior which involves moral turpitude constitutes [libel] per se.” Snyder v. Cedar, Superior Court, Judicial District of New Haven, Docket No. CV 01 0454296 (February 16, 2006, Pittman, J.); see Battista v. United Illuminating Co., 10 Conn. App. 486, 493 (1987)

Whether Walston is entitled to qualified immunity for making the report, based upon the totality of circumstances, is an issue of fact. He appears to have engaged in a pattern of making accusations and statements from 2011-2014 concerning Crismale in an attempt to label him a criminal. (Ex. 7, Ex. 8)

IV. CONCLUSION

For the reasons set forth above, the plaintiff respectfully requests that the defendant's Motion for Summary Judgment be denied.

THE PLAINTIFF

BY: /s/ (#102746)
KATRENA ENGSTROM
John R. Williams and Associates, LLC
51 Elm Street
New Haven, CT 06510
(203) 562-9931
Fax: (203) 776-9494
Kengstrom@johnrwilliams.com

CERTIFICATION OF SERVICE

On the above date, copies hereof were sent to Christian Sterling, Katz & Seligman, P.C., 130 Washington Street, Hartford, CT 06106, 860-241-9127, csterling@katzandseligman.com; Vincent Cervoni, Esq., 221 North Main Street, Wallingford, CT 06492, 203-284-5002, vinny@attorneycervoni.com; and Joseph A. Jordano, Assistant Attorney General, P. O. Box 120, Hartford, CT 06105, 860-808-5084, joseph.jordano@ct.gov

/s/ (#102746)
KATRENA ENGSTROM

NO. NNH-CV-14-6049358-S	:	
NICHOLAS CRISMALE	:	SUPERIOR COURT
	:	
VS.	:	
	:	J. D. OF NEW HAVEN
CHRISTOPHER ANDREW WALSTON,	:	
JEFFREY SAMORAJCZYK and	:	
TODD AARON CHENACKI	:	APRIL 7, 2016

PLAINTIFF'S EXHIBIT LIST

1. Criminal trial transcript, excerpts, 3/17/14
2. Criminal trial transcript, 3/18/14, excerpts
3. Affidavit of Jeffrey Samorajczyk, 7/22/15
4. Affidavit of Todd Chemacki, 8/4/15
5. Nicholas Crismale deposition
6. Misdemeanor summons/complaint
7. Walston dispatch-DEEP 4/19/12
8. Hartford Courant article, 3/10/14

THE PLAINTIFF

BY: /s/ (#102746)
KATRENA ENGSTROM (#102746)
John R. Williams and Associates, LLC
51 Elm Street
New Haven, CT 06510
(203) 562-9931
Fax: (203) 776-9494
Kengstrom@johnrwilliams.com

CERTIFICATION OF SERVICE

On the above date, copies hereof were sent to Christian Sterling, Katz & Seligman, P.C., 130 Washington Street, Hartford, CT 06106, 860-241-9127, csterling@katzandseligman.com; Vincent Cervoni, Esq., 221 North Main Street, Wallingford, CT 06492, 203-284-5002, vinny@attorneycervoni.com; and Joseph A. Jordano, Assistant Attorney General, P. O. Box 120, Hartford, CT 06105, 860-808-5084, joseph.jordano@ct.gov

/s/ (#102746)
KATRENA ENGSTROM

EX. 1

NO: NNH CR11 0124273T : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF NEW HAVEN
VS. : AT NEW HAVEN, CONNECTICUT
NICHOLAS CRISMALE : MARCH 17, 2014

(Testimony Only)

BEFORE THE HONORABLE BRIAN T. FISCHER, JUDGE

A P P E A R A N C E S :

Representing the State

ATTORNEY KELLY DAVIS
State's Attorney's Office
121 Elm Street
New Haven, Connecticut 06510

Representing the Defendant

ATTORNEY JEREMIAH DONOVAN
123 Elm Street, Unit 400
Old Saybrook, Connecticut 06475

Recorded And Transcribed By
Mary Lou Coppola
Court Recording Monitor
235 Church Street
New Haven, Connecticut 06510

1 Q Mr. Walston, I don't want you to testify to what --

2 A Okay.

3 Q -- you were told. Did anything happen that day that
4 required you to go somewhere?

5 A Yes.

6 Q Where did you go?

7 A I went down to my clam lot on the shore.

8 Q What was the weather like when you were down there
9 by the shore?

10 A It was a flat, calm day, with, you know, a sunny
11 day.

12 Q And when you were there what did you see?

13 A I saw two vessels in -- fishing out off the land.

14 Q So from where you were standing can you -- Where
15 were you standing?

16 A I was standing on a friend of mine's property that
17 overlooked the clam bed.

18 Q And how far do you think you were from the boats that
19 you saw?

20 A Anywhere -- Somewhere around 500 yards.

21 Q Did you recognize the boats you saw?

22 A Yes.

23 Q How did you recognize them?

24 A I can read the letters on the boat.

25 Q And what did the letters say?

26 A It said Mighty Max on the one boat, but I could not
27 recognize the other letter on the other boat.

1 Q Could you recognize people on the boat?

2 A Some, not all of them.

3 Q Who did you recognize?

4 A I recognized Nick Crismale on the Mighty Max.

5 Q And the Mighty Max is the one you could read the
6 lettering?

7 A Yes.

8 Q And what was happening on the boat?

9 A Both dredges were on the bottom and the deck hands
10 were culling the clams on the table.

11 Q What does that mean?

12 A It means sorting them out on the table as they came
13 up.

14 Q What do you mean by come up?

15 A Up in the dredge or in the suction dredge on the
16 conveyor.

17 Q And was the boat stationary or was it moving around?

18 A The -- The boat was moving, both boats were moving,
19 crisscrossing paths from each other in the water.

20 Q How far would you say they moved?

21 A Well, the lot is a 20 acre lot so they were in and
22 out that whole 20 acres.

23 Q When you saw the -- the workers sorting and the clams
24 coming up was the boat moving then?

25 A Yes.

26 Q How long did you watch?

27 A Approximately about an hour.

1 Q And why did you think it was your plot, or your bed?

2 A Just looking at the land delineations and -- and how
3 close they were to shore I knew that he was not where he was
4 supposed to be.

5 Q How often do you go to that -- During the season how
6 often do you go to that particular area, your bed?

7 A Four to five times a week.

8 Q Would you say you're very familiar with the area?

9 A Yes.

10 Q So after you were watching them what did you do?

11 A I called the town police officer.

12 Q What town?

13 A Guilford.

14 Q And then what did you do?

15 A And then I -- He came down to look at the situation
16 but he didn't have any idea what was going on, he just --
17 you know, I just had him there just as a witness of what
18 was going on, and then I proceeded to call the DEP to come
19 down and investigate the situation.

20 Q And what did you see after you called the Department
21 of Environmental Protection, the police, their police
22 agency?

23 A What did I see?

24 Q Yeah.

25 A Like when they came there or -- I just informed them
26 and they said that they were on their way from Old Lyme and
27 they were going to be heading over to check out what was

1 going on.

2 Q So after you did that how long were you waiting?

3 A Probably about an hour.

4 Q And then after that hour what did you see?

5 A I seen the DEP vessel approach from the east and ran
6 up on both boats and they specifically targeted -- it looked
7 like they targeted Mighty Max to go see, 'cause there was
8 two boats so they really can only get one boat at a time.
9 The other boat proceeded to get immediately off the lot
10 and, you know, blew black smoke and had the boat in full
11 gear and took off and the Mighty Max just stayed there
12 and another boat -- then the DEP boat pulled right up to
13 him.

14 Q Did you see anything after that?

15 A Yeah, I could see that they were, you know, they
16 were talking to him and then he -- they had to board the
17 boat and discuss stuff. At that time I was probably maybe
18 600 feet away.

19 ATTY. DAVIS: Your Honor, may I have one moment.

20 THE COURT: Sure.

21 BY ATTY. DAVIS:

22 Q Mr. Walston, have you ever spoken to the press or
23 anyone about this incident?

24 A Yes.

25 Q And why did you do that?

26 A Just to state the purpose of that, I just didn't
27 like to see what was going on in the shellfish business.

1 Q What do you mean by that?

2 A I mean, I didn't --

3 ATTY. DONOVAN: Well, objection. I don't
4 object if the prosecutor wants to elicit what he
5 told the press, but all of this background.

6 THE COURT: Sure. No, I agree. He can indicate
7 what he said but not the reasons. Go ahead.

8 ATTY. DAVIS: Thank you, your Honor.

9 BY ATTY. DAVIS:

10 Q So what did you say?

11 A What did I say?

12 Q Yes.

13 A Specifically?

14 Q Sure.

15 A In the press?

16 Q Yes.

17 A They asked me about what happened out there and I
18 told them it was still going on in court and I just told
19 them what I saw and what the officers did and what the
20 police report was and that's pretty much all I gave for
21 them to -- you know, what they needed to know.

22 ATTY. DAVIS: Thank you, your Honor. That's
23 all I have for this witness.

24 THE COURT: Why don't we do this, counsel, we'll
25 take our break before cross-examination.

26 ATTY. DONOVAN: Thank you, your Honor.

27 THE COURT: Ladies and gentlemen, we're going to

1 take our morning break now, so it'll be about 15
2 minutes. Those who want to stay here on the 5th
3 floor, everybody's going to get up in a moment. If
4 you want to stay here on the 5th floor that's great.
5 Those who want to go up to the 9th floor madam clerk
6 will assist you to get up to the 9th floor. Do not
7 discuss any aspect of this case. Let the marshal
8 know, he's going to open the door for you, you're
9 going to bring your notebooks in and leave them
10 there and when you come back in about 15 minutes
11 we'll come back and evidence will continue. Okay.
12 So marshal, if you could please get the door for
13 them. Sir, you could get down.

14 MR. WALSTON: Thank you.

15 (The recess was taken.)

16 THE COURT: All right. The witness could
17 re-take the stand. Is the witness outside? Okay,
18 marshal, we could bring the jury out please.

19 ATTY. DONOVAN: Yes.

20 (The jury panel entered the courtroom.)

21 THE COURT: Okay. Thank you. The witness could
22 retake the stand please. Okay. With that, Counsel,
23 are we ready to bring the jury out?

24 ATTY. DONOVAN: We are, your Honor.

25 THE COURT: Okay. The record will reflect the
26 jury panel is back in the courtroom. Cross-
27 examination.

1 ATTY. DONOVAN: Thank you, your Honor.

2 THE COURT: You're welcome.

3 CROSS-EXAMINATION BY ATTY. DONOVAN:

4 Q You would agree with me, sir, would you not, that
5 when you told the jury what the you told the press you were
6 not entirely truthful; were you?

7 A What do you mean?

8 Q Well, were you truthful -- When you told the jury
9 that, oh, I just told the reporter about what was happening,
10 et cetera, et cetera, that wasn't quite the whole true; was
11 it?

12 A Tell me specifically what you're aiming for.

13 Q I'm the one who asks the questions.

14 A Oh.

15 THE COURT: Just answer the question to the best
16 of your ability, sir.

17 Q Did you read -- Did you read the -- Did you read the
18 Hartford Courant article?

19 A Yes, sir.

20 Q You did; right? Now, let me ask you, was it you who
21 contacted the reporter or the reporter who contacted you?

22 A The reporter contacted me.

23 Q All right. Were you told by the DEP officials that a
24 reporter might be contacting you?

25 A No, sir.

26 Q And did you know how the reporter got your name?

27 A No, sir.

1 Q All right. So you don't know whether it was DEP who
2 planted this story, do you?

3 ATTY. DAVIS: Your Honor, that's asking for
4 speculation objection, the State objects.

5 THE COURT: He answered he didn't know so I'll
6 strike the -- I'll sustain the objection, strike the
7 question. Go ahead.

8 BY ATTY. DONOVAN:

9 Q So let me ask you again, you've read the article;
10 right?

11 A Yes, sir.

12 Q You've seen what the article quotes you as saying;
13 right? Right?

14 A Yes, sir.

15 Q All right. And so let me ask you again, when you
16 told the jury what you told -- what it was that you told
17 the reporter you weren't being 100% truthful; were you?

18 A I don't remember.

19 Q You would agree with me, would you not, that the
20 only thing that's quoted in the article and the only
21 thing -- well, let me ask you. Let me withdraw that and
22 say is it not true, sir, that what you told the reporter
23 is, all I know is I nailed him, and I nailed him good.
24 That's what you told the reporter; right?

25 A Yes, sir.

26 Q All right. And you didn't mention that to the
27 jury?

1 A It was not specifically asked me about the
2 specific --

3 Q Oh, I see. I see. The prosecutor --

4 A That I -- That I can see.

5 Q The prosecutor didn't specifically ask you about
6 what you told the press?

7 A Not specific -- specific question, no.

8 Q Yeah, you didn't think that when the prosecutor
9 asked you what you told the Courant maybe, maybe you
10 should have told the jury what I told the Courant was, All
11 I know is I nailed him, and I nailed him good. Mm? You
12 don't think that --

13 A Well, it's --

14 Q You don't think --

15 A I guess the game wardens can determine how he got
16 caught then.

17 Q The question to you though is, is it your --

18 A Yes, I said I nailed him, I nailed him good.
19 That's what they asked me, that's what I told them.

20 Q All right. Okay. Any other parts of your
21 testimony, sir, that maybe were incomplete?

22 A No.

23 Q All right. So I'm taking a look here at State's
24 Exhibit 1, and I have some questions about it. You
25 would agree with me, would you not, that State's Exhibit 1
26 indicates that you have a license to harvest shellfish on
27 six different lots; is that right?

1 A It sounds about right, yes.

2 Q And one of them is the lot that we're concerned with
3 and that's lot 562; right?

4 A Yes, sir.

5 Q Now, you would agree with me, would you not that
6 with respect to your license there aren't any -- they don't
7 set forth the coordinates that mark the boundaries of your
8 lot; does it?

9 A None of the licenses that the State gives out tells
10 us the coordinates, the town issues you -- and you have the
11 coordinates with you that have to be on the boat at all
12 times.

13 Q So you're telling the jury that from your vast
14 experience in clamming none of the licenses that the State
15 issues has the coordinates on it?

16 A The State has the coordinates themselves on record
17 so then you have to refer to it, your license has to be on
18 there, what lot you're working on.

19 Q All right. So from your expertise, I just want to
20 make sure we got this right, you're telling the jury that
21 no license issued by the State of Connecticut to do shell
22 fishing sets forth the coordinates?

23 ATTY. DAVIS: Your Honor, I would object to
24 that question. He doesn't work for the State of
25 Connecticut, he has not seen every license in the
26 State of Connecticut, I think it's beyond the scope
27 of his personal knowledge.

1 THE COURT: No, I'll overrule that. If he can
2 answer it, he can answer it. Do you want the
3 question repeated or did you --

4 MR. WALSTON: Yeah, could I have it repeated
5 one more time please.

6 ATTY. DONOVAN: Sure.

7 BY ATTY. DONOVAN:

8 Q So on the basis of your knowledge of the clamming
9 industry are you telling the jury that no shell fishing
10 license issued by the State of Connecticut sets forth the --
11 sets forth the --

12 A I believe the State beds, if you ge --

13 Q So, hold on. Sets forth the coordinates that mark
14 the boundaries and --

15 A If you lease state beds the state issues you a
16 license with it, but with a -- with a leased bed the
17 towns -- you get the license, the coordinates are given
18 for the lot, the coordinates are then given to the State
19 so they can have that on record if they have to look at the
20 lots. That's all I'm going to say about that.

21 Q That's all you're going to say.

22 A Yep.

23 Q All right. Now, there's a bit of a problem, is
24 there not, first of all, have you ev -- have you yourself
25 ever obtained the -- the map that is said to be on file
26 with respect to lot 562?

27 A Yes, sir.

1 Q And have you brought it with you today?

2 A No, sir.

3 Q All right. All right. And as you sit there right
4 now can you tell the jurors the coordinates of the boun --
5 of the four corners of your lot?

6 A No, I cannot tell you the actual coordinates,
7 'cause there actually is more than four corners on that
8 particular lot.

9 Q All right.

10 A And they're all longitude and latitude and I can't
11 remember of the top of my head 'cause there's probably
12 about 8 point on there.

13 Q Now, maybe you can explain this to me. If I were --
14 If I were on lot 562, okay, and I would walk directly north
15 I would come to the Town of Branford; isn't that right?
16 I'm sorry, the Town of -- the Town of Guilford.

17 A Town of Guilford.

18 Q Right. You had Guilford, Branford water is
19 considerably a couple miles to the -- to the west of lot --

20 A Not a couple miles. I mean, not the water -- the
21 land is maybe a half a mile, the water is a 50 foot buffer
22 between Guilford and Branford.

23 Q All right.

24 A Water, shellfish beds.

25 Q All right. And that -- And that -- that buffer,
26 that boundary line between Guilford and Branford is about --
27 about --

1 ATTY. DONOVAN: If I could have just a second.

2 THE COURT: Sure.

3 Q It's about -- It's about a half a mile to the west
4 of lot 562; isn't that right?

5 A No.

6 Q How far -- How far to the west is it?

7 A The boundary line between Guilford and Branford?

8 Q Yeah.

9 A 50 feet.

10 Q 50 feet to the west?

11 A Yeah.

12 Q So let me just --

13 A Where the Guilford shellfish beds begin and the
14 Branford shellfish beds --

15 Q No, I'm talking --

16 A -- begin it's 50 feet, with the shellfish bed, the
17 land is probably --

18 Q Okay.

19 A -- a half a mile.

20 Q All right. Fair enough.

21 A Roughly.

22 Q Fair enough. Fair enough. All right. Now, I
23 think you said that State's Exhibit 1, your license actually
24 indicates where you had planted clams; am I right about
25 that?

26 A Yes, sir.

27 Q All right. And the license indicates that as of --

1 as of the time of this incident, December 14th, of 2011,
2 you had planted clams on lots 301E and 308E in the Branford
3 Town Thimble Island region; is that right?

4 A Yes, sir.

5 Q All right. So you haven't planted any clams on lot
6 562; right?

7 A No, 562 is a natural seed lot that -- a natural lot
8 that I worked on with my small dredge boat.

9 Q And you -- There weren't any -- There weren't any
10 nets on lot 562?

11 A No. That lots 20 feet deep.

12 Q All right. And there weren't any buoys that showed
13 the edges of the lot; were there?

14 A Not at that particular time, no.

15 Q All right. And now when you worked with -- was Mr.
16 Crismale the first job -- active job you had in the
17 clamming industry?

18 A Yes.

19 Q And you and Mr. Crismale parted on good terms; did
20 you not?

21 A Yes.

22 Q You and he were friendly throughout the course of
23 your employment?

24 A Yes.

25 Q But when -- When you saw the -- when you thought
26 you saw Mr. Crismale clamming on what you thought was your
27 bed you didn't make any effort to contact him and say, Hey

1 Nick, you're off your bed; did you?

2 A What's that have to do with my bed, I didn't even
3 have shellfish beds back then.

4 Q Oh, I'm sorry. I'm talking about -- I'm talking
5 about on -- on the day that you nailed him and you nailed
6 him good, that's the day I'm talking about.

7 A Now, you're going back to that?

8 Q Yeah, that's what I'm going back to.

9 A Well, could you repeat the question.

10 ATTY. DAVIS: Your Honor.

11 THE COURT: Hold on, let's hear the question
12 again then if there's any objection.

13 ATTY. DAVIS: Thank you.

14 THE COURT: So we're referring to December 14th,
15 2011?

16 ATTY. DONOVAN: We are, your Honor.

17 BY ATTY. DONOVAN:

18 Q Now, on December 14th, 2011, you didn't make any
19 effort to try to contact Mr. Crismale, and say to him, Hey,
20 Nick, I think you're off your bed, you're on my bed, you
21 didn't do that; did you?

22 A No.

23 Q You called the DEP; right?

24 A Yes.

25 Q Okay.

26 ATTY. DAVIS: Your Honor, I'd ask that that be
27 stricken, it's not -- I don't think it's relevant

1 that he didn't --

2 THE COURT: It's appropriate cross-examination,
3 the jury could give it whatever weight they see fit.

4 BY ATTY. DONOVAN:

5 Q Now, when you were -- When you were down at the shore
6 observing the Mighty Max and sister ship, you did not have
7 binoculars?

8 A Yes, I did have binoculars with me, sir.

9 Q And you also had a camera; didn't you?

10 A Yes, sir.

11 Q And you also took photographs; didn't you?

12 A Yes, sir.

13 Q And you haven't brought those photographs today;
14 have you?

15 A No, sir.

16 Q And the reason you haven't brought those photographs
17 is 'cause they would give a lie to your testimony; isn't
18 that right?

19 A Nothing was told about that, sir.

20 Q I'm sorry.

21 A Nothing was told to me about that, sir.

22 Q Nothing was told to you about that?

23 A No.

24 Q I mean you went to the Guilford Shellfish Commission
25 and you told them you had photographs; right?

26 A They took photographs themselves, sir.

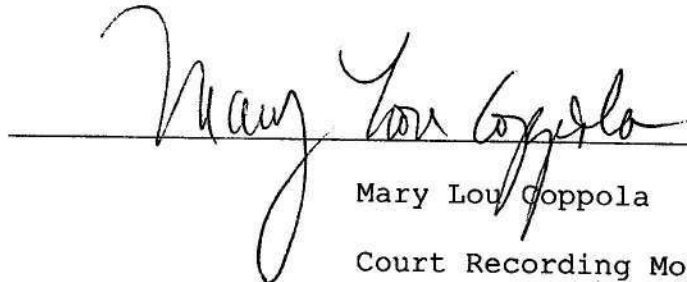
27 Q Right. And those photographs aren't here either;

1 NNH CR11 0124273T : SUPERIOR COURT
2 STATE OF CONNECTICUT : JUDICIAL DISTRICT
3 OF NEW HAVEN
4 VS. : AT NEW HAVEN, CONNECTICUT
5 NICHOLAS CRISMALE : MARCH 17, 2014
6

7 C E R T I F I C A T I O N
8

9 I hereby certify that the foregoing pages are a true
10 and correct transcription of the audio recording of the
11 above-referenced case, heard in Superior Court, Judicial
12 District of New Haven, Connecticut, at New Haven, before the
13 Honorable Brian T. Fischer, Judge, on the 17th day of March,
14 2014.
15

16
17 Dated this 19th day of May, 2014, in New Haven,
18 Connecticut.
19

20
21 
22 _____
23 Mary Lou Coppola
24 Court Recording Monitor
25
26

EX. 2

NO: NNH CR11 0124273T : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF NEW HAVEN
VS. : AT NEW HAVEN, CONNECTICUT
NICHOLAS CRISMALE : MARCH 18, 2014

(Testimony Only)

BEFORE THE HONORABLE BRIAN T. FISCHER, JUDGE

A P P E A R A N C E S :

Representing the State

ATTORNEY KELLY DAVIS
State's Attorney's Office
121 Elm Street
New Haven, Connecticut 06510

Representing the Defendant

ATTORNEY JEREMIAH DONOVAN
123 Elm Street, Unit 400
Old Saybrook, Connecticut 06475

Recorded and Transcribed By
Mary Lou Coppola
Court Recording Monitor
235 Church Street
New Haven, Connecticut 06510

1 or whatever so the clam, the clams or piles of clams are
2 in a location, they're breathing, they're pumping water,
3 they're -- and they're doing things but they're not really
4 able to access the bottom so ultimately what happens is
5 between the currents and the water and the abrasiveness of
6 the sand and the water it cleans all that mud off, and
7 those clams ultimately become lighter in color, much the
8 same as you would take a clam and you put it in your
9 refrigerator. If you look at it a couple of days later
10 it's kind of white, that's because all the mud has dried
11 off, or has been whatever, so you see the clams are in a
12 lighter color. The mud is gone off them from the
13 abrasiveness.

14 Q So when you began -- when you moved over to the
15 western portion of the lot did you begin to find white
16 clams?

17 A Not exactly white, they were very light in color,
18 like a tannish brown, yeah.

19 Q And -- And you thought those were the clams that you
20 previously transplanted there?

21 A I knew they were.

22 Q All right. So did you -- did you then begin
23 harvesting those clams?

24 A Yes.

25 Q All right. Now, in which, can you explain to the
26 jurors was the Mighty Max traveling east to west, north to
27 south, which way was it going?

1 A East to west.

2 Q East to west. Okay. Now, when you got to the
3 western boundary of your lot what would you do?

4 A I would pick up the dredge and then try to turn,
5 you could turn the boat around and start heading back to
6 the -- start heading back to the east.

7 Q And how big -- how long does it take for the boat to
8 make a full -- a full turn around?

9 A Well, it depends, it depends on the tides, the
10 currents, as I -- as I said before.

11 Q Well, let me ask you this. Let me stop you for a
12 second. Do you remember at this point, you know, just
13 before the DEP came which way the tides were going?

14 A They were on the incoming.

15 Q They were incoming?

16 A Yes.

17 Q And so which direction were they moving the boats?

18 A To the west.

19 Q Okay. From the east to the west?

20 A Yes.

21 Q Okay. And that influenced the amount of space it
22 took to turn -- to turn the boat around?

23 A Yes, as you're trying to turn the boat the current
24 and the tide is pushing you.

25 Q Right. Now is there any doubt at all when you were
26 turning the boat around you were no longer on your lot?

27 A Yes.

1 Q That -- I mean, you were no longer on your lot when
2 you were turning the boat around; right?

3 A Right.

4 Q All right. But was the -- Was the -- Was the dredge
5 actually dredging clams when you were making the turn?

6 A No, it couldn't be.

7 Q And I don't mean to repeat this again. Could you
8 explain to the jurors one more time why when you're making
9 the turn you can't have the dredge down in the mud?

10 A Because of the angle of the dredge going down in
11 the middle of the boat you're actually pivoting on that
12 dredge head which is only held on by two boats, two pivot
13 points, it kind of fluctuates, it's able to vacillate, it
14 pivots, so you've got to be careful when turning that you
15 don't pivot and bury that and snap it off.

16 Q Now after you've made a full turn and gotten back to
17 the edge of your -- to the edge of your lot what would you
18 do then?

19 A I'd redeploy the dredge onto the bottom, lower it,
20 the three or four foot, whatever it was that I had raised
21 it, and then put it back on the bottom.

22 Q Now, is there any way for somebody on shore to tell
23 whether the dredge is on the bottom and clamming or whether
24 it's -- whether it's -- it's in the water and just turning?

25 ATTY. DAVIS: Your Honor, I would object to
26 that. I think it calls for speculative testimony.

27 THE COURT: No, I'll allow, I'll overrule that.

1 I'll allow the witness to testify, if he knows, you
2 could cross-examine him on this.

3 BY THE WITNESS:

4 A Unless he could see down into the water at 15 or 18
5 feet far land and we were far off land, I don't -- I don't
6 know.

7 Q Now, did -- during the course of the morning did
8 you -- just a second, the complainant in this case's name is
9 what?

10 A Chris Walston.

11 Q And do you know Chris?

12 A Yes.

13 Q And did he -- How do you know him?

14 A Chris worked for me for a few years on a boat both
15 lobstering and clamming.

16 Q All right. Would it be fair to say Chris is somebody
17 who really works for his dad but in the summer time when the
18 weather is nice he goes out and does a little clamming?

19 A Yes.

20 Q Have you ever actually seen him work on Lot 562?

21 A No.

22 Q All right. And during the course of that morning did
23 you receive any telephone call from Mr. Walston saying, Hey
24 Nick, you've always been good to me, I think you might be
25 encroaching on my land?

26 ATTY. DAVIS: Objection, your Honor, that's
27 hearsay.

1 THE COURT: Hold on. Why don't we do that in
2 two parts. I don't know if he received a call.

3 BY ATTY. DONOVAN:

4 Q Did you ever receive a call from him at all?

5 A No.

6 Q Before the DEP showed up that morning did anybody
7 make any suggestion to you that you were encroaching on
8 anybody else's lot?

9 A No.

10 Q And if he called would you tell him, I'm not, I'm
11 pulling the -- I'm pulling the dredge out, I'm just making
12 the turns, it's not on the bottom when I'm in the lot.

13 A It's very difficult and there's a lot of speculation
14 in the activity of this particular vessel, people see it as
15 a Star Wars type of vessel, it is -- it is somewhat new
16 technology and most people -- most fisherman are not
17 familiar with the vessel.

18 Q Okay. All right. But in any case before the DEP
19 actually boarded you nobody had suggested to you that you
20 were off your lot?

21 A No.

22 Q And were you -- Were you clamming off your lot?

23 A I was not clamming off my lot.

24 Q All right. Now, when the DEP approached you do you
25 remember which direction you were going?

26 A I was heading east.

27 Q All right. And you had just made a turn; is that

1 right?

2 A I was -- I was already into the turn.

3 Q All right. Okay. Now, with respect to the latitude
4 or longitude, you know we had that testimony about the piece
5 of paper which now seems to have disappeared, at the time
6 the DEP made the stop did you yourself go and look at your
7 own GPS device to see what your longitude or latitude was?

8 A There was some confusion when they got on the boat,
9 but I -- I -- Yes, I did. Well, I looked at my charting,
10 yeah.

11 Q Okay. And did you feel you were on your own lot?

12 A At that point I wasn't.

13 Q All right. So you weren't on your lot. When the DEP
14 came onto the boat were you clamming?

15 A No, I was not.

16 Q You were making a turn?

17 A Yes.

18 Q Okay. Fair enough. Now, when the DEP came on your
19 boat did you tell them anything? Did you say, hey, look, I
20 got this chart, it's all messed up, here are the points,
21 here are the points and I know I haven't been doing it,
22 but, did you tell them all of that?

23 A I didn't really talk to them that much. I --

24 Q And explain to the jury why you didn't talk to the
25 DEP when they came on your boat.

26 A When the DEP came on the boat, initially when I saw
27 them coming I thought it was just a routine check, I had

1 no -- no -- and from their actions when they came on the
2 boat I knew that I wasn't going to discuss anything with
3 them, they just -- they were adamant about arresting me.

4 Q All right. And do you think that might have --

5 ATTY. DAVIS: Objection, your Honor. How does
6 he -- How can he testify to what the DEP --

7 THE COURT: No, I'll strike that response.
8 Go ahead, Attorney Donovan.

9 BY ATTY. DONOVAN:

10 Q Could you describe for the jurors the demeanor of the
11 DEP officers, well, you saw the DEP officers testify here at
12 trial; right? Did you see them testify at trial, the two
13 DEP officers?

14 A Yes.

15 Q Okay. And are those the two DEP officers who boarded
16 your boat?

17 A Yes.

18 Q And when they boarded your boat was their demeanor
19 the same, demeanor of sweet reasonableness that they had
20 when they testified or was it somewhat different?

21 ATTY. DAVIS: Your Honor, that's -- I'd object.

22 THE COURT: Yeah. No, just ask the questions,
23 don't throw in the editorial comments. All right.

24 ATTY. DONOVAN: I will, Judge.

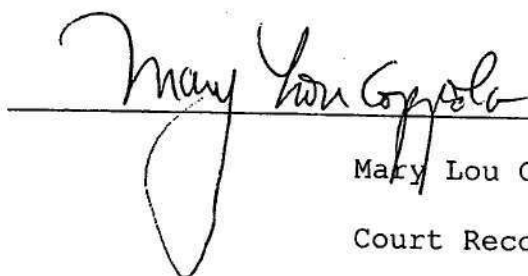
25 THE COURT: You know, you've done it several
26 times, I don't want it to happen again, Attorney
27 Donovan.

1 NO: NNH CR11 0124273T : SUPERIOR COURT
2 STATE OF CONNECTICUT : JUDICIAL DISTRICT
3 OF NEW HAVEN
4 VS. : AT NEW HAVEN, CONNECTICUT
5 NICHOLAS CRISMALE : MARCH 18, 2014
6

7 C E R T I F I C A T I O N
8 /

9 I hereby certify the foregoing pages are a true and
10 correct transcription of the audio recording of the above-
11 referenced case, heard in Superior Court, Judicial District
12 of New Haven, Connecticut, before the Honorable Brian T.
13 Fischer, Judge, on the 18th day of March, 2014.
14

15
16 Dated this 23rd day of May, 2014, in New Haven,
17 Connecticut.
18

19
20 
21 Mary Lou Coppola
22 Court Recording Monitor
23
24
25
26
27

EX. 3

DOCKET NO. NNH-CV-14-6049358-S

NICHOLAS CRISMALE	:	SUPERIOR COURT
<i>Plaintiff,</i>	:	
	:	JUDICIAL DISTRICT OF
v.	:	AT
	:	
CHRISTOPHER WALSTON,	:	
ET AL	:	
<i>Defendants.</i>	:	JULY 22, 2015

AFFIDAVIT OF JEFFREY SAMORAJCZYK

I, JEFFREY SAMORAJCZYK, having been duly sworn and upon oath testify as follows:

1. I am over eighteen years old and reside in the State of Connecticut.
2. I am currently employed as a sworn police officer for the Connecticut Department of Energy and Environmental Protection (hereinafter "DEEP") within the Division of Environmental Conservation Police (hereinafter the "Encon Police). I have served as an Encon Police Officer since 1999.
3. The Encon Police enforce the shellfishing laws along the Connecticut coast on Long Island Sound.
4. On December 14, 2011, I received a complaint through the DEEP dispatch regarding commercial shellfishing in the proximity of the town lines of Branford and Guilford, Connecticut, on the waters of Long Island Sound.
5. I contacted by telephone the complainant, Christopher Walston, who advised me that he leases shellfish lot number 562 in Guilford and that two commercial shellfish vessels were actively harvesting clams on his lot. According to Walston, the two vessels were owned by Nicholas Crismale.

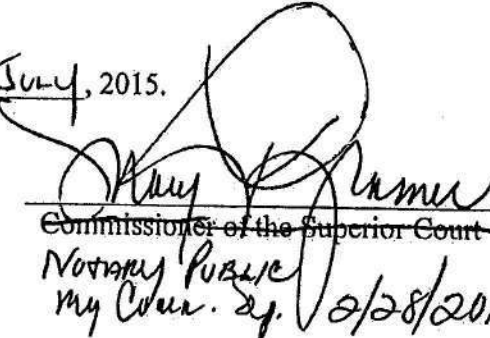
6. Encon Police Officer Todd Chemacki and I responded in uniform by police boat from the Old Lyme DEEP Marine Headquarters. At 11:40 AM, I observed the "Mighty Maxx" vessel, CT registration 2091BE, actively harvesting shellfish. More specifically, I saw the vessel's dredge in the water, pulling up clams on a conveyer belt and workers sorting the clams.
7. As the police boat Officer Chemacki and I were on pulled alongside the vessel, I observed that the "Mighty Maxx" was being operated by Nicholas Crismale, owner of Mid-Sound Fisheries.
8. The police boat has a GPS navigation system. As we pulled alongside the "Mighty Maxx" vessel, Officer Chemacki recorded the GPS coordinates identified on our police boat's GPS navigation system.
9. The "Proud Mary," also registered to Crismale, was off to the east of our location, and also harvesting shellfish, so Officer Chemacki left me on the "Mighty Maxx" and drove to the "Proud Mary."
10. When I was aboard the "Mighty Maxx," I noticed several bags of hard clams sorted and stacked. I asked Crismale where he was harvesting and he responded " Lot number 44." Then I asked him if we were currently on lot number 44, and he replied, "I'm off." When asked how far off lot number 44 we were, Crismale replied "A couple hundred feet." Three of Crismale's workers were nearby when this discussion occurred.
11. Those engaged in the act of shellfish harvesting are required pursuant to CGS § 26-192c to hold a license from the Department of Agriculture to engage in such activity. Persons engaged in the act of shellfish harvesting are also required to keep such license on board

the vessel, as noted on said license. Crismale was unable to produce his commercial shellfish license upon my request while on board the "Mighty Maxx."

12. While on site, Officer Chemacki communicated to me that he had made contact with the Bureau of Aquaculture (within the Department of Agriculture) concerning the location of the "Mighty Maxx" and its activities. Based upon the information exchanged between Officer Chemacki and Aquaculture staff concerning the vessel's location and activities, "Mighty Maxx" was found to be harvesting clams on lot number 562, not lot number 44.
13. I concluded that probable cause existed that Crismale had engaged in activity in violation of CGS § 26-192c and § 53a-125, based upon the following facts and circumstances: (a) Walston's complaint; (b) my observations of the "Mighty Maxx's" active harvesting of shellfish when Officer Chemacki and I approached the vessel on December 14, 2011; (c) the notification provided by the Bureau of Aquaculture through Officer Chemacki that the "Mighty Maxx" was on lot number 562 rather than on lot number 44 based upon our police boat's GPS navigation system coordinates; and (d) Crismale's admission to me while we were on board the "Mighty Maxx" that he was off his leased lot.


JEREREY SAMORAJCZYK

Subscribed and sworn before this 22nd of July, 2015.


~~Commissioner of the Superior Court~~

Notary Public

My Comm. Exp. 2/28/2018

EX. 4

DOCKET NO. NNH-CV-14-6049358-S

NICHOLAS CRISMALE
Plaintiff,

v.

CHRISTOPHER WALSTON,
ET AL
Defendants.

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW HAVEN
AT NEW HAVEN

AUGUST 4, 2015

AFFIDAVIT OF TODD CHEMACKI

I, TODD CHEMACKI, having been duly sworn and upon oath testify as follows:

1. I am over eighteen years old and reside in the State of Connecticut.
2. I am currently employed as a sworn police officer for the Connecticut Department of Energy and Environmental Protection (hereinafter "DEEP") within the Division of Environmental Conservation Police (hereinafter the "Encon Police"). I have served as an Encon Police Officer since 1999.
3. The Encon Police enforce the shellfishing laws along the Connecticut coast on Long Island Sound.
4. On December 14, 2011, Encon Police Officer Samorajczyk and I responded in uniform by police boat from the Old Lyme DEEP Marine Headquarters to a complaint that had been made through DEEP dispatch regarding commercial shellfishing in the proximity of the town lines of Branford and Guilford, Connecticut, on the waters of Long Island Sound.
5. Upon reaching the area of Branford and Guilford on Long Island Sound waters, I saw a boat that appeared to be a commercial shellfishing vessel and approached it. The boat

was the "Mighty Maxx," and it was actively harvesting shellfish. More specifically, I saw the vessel's dredge in the water, pulling up clams on a conveyer belt and workers engaged in activity in the sorting area.

6. I observed that the "Mighty Maxx" was being operated by Nicholas Crismale, an owner of Mid-Sound Fisheries.
7. The police boat has a GPS navigation system. As we pulled alongside the "Mighty Maxx" vessel, I recorded the GPS coordinates of our current location identified on our police boat's GPS navigation system.
8. I observed another commercial shellfishing vessel in the area to the east of our location, so I left Officer Samorajczyk on the "Mighty Max" in order to approach the other vessel, ascertain its identity, and to determine whether it was also actively engaged in commercial shellfishing. After approaching the other vessel and collecting its information, I returned to the "Mighty Maxx."
9. Upon my return to the "Mighty Maxx," I contacted by telephone the Bureau of Aquaculture within the Department of Agriculture, and provided the GPS coordinates I had taken down for the location of our police boat alongside the "Mighty Maxx."
10. Based upon the GPS coordinates I provided, staff at the Bureau of Aquaculture advised me that the Mighty Maxx was on lot number 562, which was leased by Christopher Walston. I conveyed this information to Officer Samorajczyk.
11. Officer Samorajczyk informed me that Crismale had admitted to being off his leased lot and that Crismale was unable to produce his commercial shellfish license upon request.
12. Those engaged in the act of shellfish harvesting are required pursuant to CGS § 26-192c to hold a license from the Department of Agriculture to engage in such activity. They are

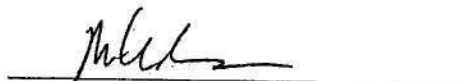
also required to keep such license on board the vessel while engaged in such activity, as noted on the license.

13. I concluded that probable cause existed that Crismale had engaged in activity in violation of CGS § 26-192c and § 53a-125, based upon the following facts and circumstances: (a) Walston's complaint; (b) my observations of the "Mighty Maxx's" active harvesting of shellfish when Officer Samorajczyk and I approached the vessel on December 14, 2011; (c) the notification provided by the Bureau of Aquaculture through my communication with Aquaculture staff that the "Mighty Maxx" was on lot number 562 leased by another individual based upon our police boat's GPS navigation system coordinates; and (d) Crismale's admission to Officer Samorajczyk while he was on board the "Mighty Maxx" that Crismale was off his leased lot.



TODD CHEMACKI

Subscribed and sworn before this 4th of August, 2015.



Commissioner of the Superior Court
Melinda M. Decker

EX. 5

COPY

1

STATE OF CONNECTICUT
SUPERIOR COURT

- - - - - x
NICHOLAS CRISMALE, | Judicial District
Plaintiff, | of New Haven
at New Haven
v. |
CHRISTOPHER ANDREW WALSTON, | Docket No.:
ET AL., | NNH-CV-14-6049358-S
Defendants. |
- - - - - x August 21, 2015

DEPOSITION OF NICHOLAS CRISMALE

Taken before Kristine A. Paradis, LSR 338, a
Court Reporter and Notary Public within and
for the State of Connecticut, pursuant to
Re-Notice and the Connecticut Practice Book,
at the Office of the Attorney General, 55 Elm
Street, Hartford, Connecticut, on August 21,
2015, commencing at 10:15 a.m.

FALZARANO COURT REPORTERS, LLC
4 Somerset Lane
Simsbury, Connecticut 06070
860.651.0258
info@falzaranocourtreporters.com

Falzarano Court Reporters

1 APPEARANCES:

2 For the Plaintiff:

3 JOHN R. WILLIAMS and ASSOCIATES, LLC
4 51 Elm Street, Suite 409
5 New Haven, Connecticut 06510
6 203.562.9931

7 BY: KATRINA ENGSTROM, ESQ.

8 For the Defendant Christopher Andrew Walston:

9 KATZ & SELIGMAN
10 130 Washington Street
11 Hartford, Connecticut 06106
12 860.547.1857
13 jarmentano@katzandseligman.com
14 BY: JAMES A. ARMENTANO, ESQ.

15 CERVONI LAW OFFICE, LLC
16 221 North Main Street
17 Wallingford, Connecticut 06492
18 203.265.5789
19 vinny@attorneycervoni.com
20 BY: VINCENT CERVONI, ESQ.

21 For the Defendants Jeffrey Samorajczyk
22 and Todd Aaron Chemacki:

23 OFFICE OF THE ATTORNEY GENERAL
24 55 Elm Street
25 P.O. Box 120
Hartford, Connecticut 06141-0120
860.808.5160
joseph.jordano@ct.gov
BY: JOSEPH JORDANO, ESQ.

26 Also Present:

27 Todd Aaron Chemacki
28 Jeffrey Samorajczyk

1 Q Is that accurate?

2 A Well, it's what they said. Yeah. I
3 mean, that's what it says here.

4 Q All right. All right. Well, was the
5 Mighty Maxx harvesting, using its dredge?

6 A The Mighty Maxx was not using its
7 dredge. The conveyor was running, but we weren't
8 harvesting clams.

9 Q All right. So, the gentlemen, the three
10 gentlemen on the boat -- are you aware the three
11 gentlemen on the boat, all right, the people who
12 worked for you indicated in sworn testimony that
13 right up until the time the policemen came up to
14 the boat that they were harvesting and taking
15 clams off the belt and that the boat was
16 harvesting?

17 A That's what you're telling me. I guess
18 that's what they testified, but whatever --

19 Q You're saying that they were wrong?

20 A I'm saying that they were not
21 knowledgeable of where that conveyor was in the
22 water.

23 Q All right. So, they were wrong in terms
24 of when they said that the boat was harvesting,
25 they were taking -- clams were coming up on the

1 conveyor belt? When the dredge is down in the
2 water, does it have to be a certain distance down
3 for clams to come up on the conveyor belt?

4 A No.

5 Q All right. It can be just in the water
6 and clams come up on the belt?

7 A No, but there can be residual clams
8 that, you know, could come up on the belt as I
9 determine to move the clams. In other words, if
10 that belt is moving and that belt is loaded with
11 clams, they can't get the clams off quick enough,
12 I can stop that belt and hold those clams on that
13 belt and then later move that belt up to when they
14 can clear. So, their knowledge of where that --
15 where that dredge was in the water is not
16 accurate. There's no way they could know.

17 Q All right. So, they can't see the
18 dredge in the water?

19 A No.

20 Q All right. They can't tell that the
21 dredge is continuing working the whole time?

22 A No.

23 Q All right. So, how long could the
24 dredge be -- how long could the clams be held on
25 the dredge before there's no more clams to be

1 taken off?

2 A It depends how -- I could hold them on
3 for hours.

4 Q All right. But as long as the thing is
5 moving and they're taking clams off, eventually
6 there's no clams to take off, correct?

7 A You would think so, right.

8 Q How long does that take?

9 A To clear the whole dredge?

10 Q Yeah. Yeah.

11 A Well, it depends how much I move it. If
12 I'm moving it.

13 Q Well, let's say you're moving it
14 constantly. Let's say you take it off the bottom
15 of the -- first of all, does it have to be on the
16 bottom of the water -- on the bottom to suck up
17 clams?

18 A Yes.

19 Q All right. When you lift it off the
20 bottom of the water, it stops sucking up clams,
21 you're telling me, but there still be may be
22 residual clams in the system coming up on the
23 belt?

24 A Yes.

25 Q All right. And if the belt keeps moving

1 and they keep taking clams off, eventually
2 there'll be no more clams to take off the belt
3 because you haven't been sucking clams up from the
4 bottom?

5 A Correct.

6 Q All right. And how long does it take
7 for them to do that?

8 A It depends how fast they are, how fast
9 they can get them off. They were only operating
10 off an 18-inch area. You got 27 feet of conveyor
11 belt and they're only operating off of 18 inches
12 of area to remove them.

13 Q So, how long do you think that the
14 conveyor belt was working with residual clams that
15 day?

16 A I don't remember.

17 Q All right. So, you're saying that their
18 perception that they were harvesting the whole
19 time until the police arrived, you're saying that
20 they don't know that; they're not knowledgeable
21 about that?

22 A They're not knowledgeable about the
23 workings of the conveyor. They have no knowledge.
24 All -- I mean, you've got people who were cutting
25 grass yesterday, fixing roofs the day before, and

1 clams coming up at that point on the belt and into
2 the sorting area, correct?

3 A Right. Yes.

4 Q Right. So, based on their observation,
5 they would know if they see a clam coming up on
6 the belt and transitioning to the sorting area,
7 correct? /

8 A Correct.

9 Q They would know that based on --

10 A Right.

11 Q -- what they see?

12 A Yes.

13 Q Okay. Now, we are here today because of
14 a lawsuit you brought in part against Christopher
15 Walston. And do you claim in that lawsuit that he
16 made a false statement about you?

17 A Yes.

18 Q Okay. Can you specifically tell me what
19 all -- whether it's one or more false statements,
20 what they are specifically?

21 A Well, specifically, I mean, the day of
22 the event Mr. Walston appeared at the Guilford
23 Shellfish Commission meeting with photographs of
24 some sort. And at that point the Guilford
25 Shellfish Commission wanted to pull my license on

1 lot 44 without giving us a chance to, you know,
2 defend ourselves. And that was, like, eight hours
3 later, talking about -- I mean, he had us
4 convicted. He had the shellfish commission
5 convinced that we were convicted. We subsequently
6 wrote a letter to the shellfish commission
7 requesting that before they do anything, remove
8 our license -- they wanted to take away our
9 license to actively fish in Guilford. And at that
10 time the chairman also contacted the Branford
11 Shellfish Commission and asked them to -- what
12 were they going to do about it also?

13 Q I didn't ask you what the consequences
14 were. The question very simply was: What was the
15 false statement or statements Mr. Walston made
16 about you that you believe are false? List them
17 for me.

18 A Mr. Walston claimed that I was on his
19 lot, I guess, to the officers and I was not. And
20 I subsequently found out I don't even think
21 Mr. Walston was there. He was -- he visually saw
22 me. So, I don't know how he could have made that.
23 I think that was malicious. He made a statement
24 in the paper that -- in *The Hartford Courant* that
25 subsequently said that, I got him -- I nailed him

1 and I nailed him good.

2 He made statements throughout town that
3 I was stealing clams from him, that I had stolen
4 clams from him to many people within town. And it
5 was very embarrassing to both my family, myself,
6 who we are pretty much lifetime residents of
7 Guilford.

8 Q Okay. Any other statements?

9 A I don't know what statements he made to
10 Aquaculture or something. I had a conversation
11 with Senator Ed Meyer. I believe that he was one
12 of the complainants to Senator Ed Meyer, he along
13 with another individual. They collaborated.

14 Q Now, do I understand it that the false
15 statement you believe he made was that on -- he
16 said on 12 -- words to the effect that on
17 12/14/2011, you were stealing clams off his clam
18 bed?

19 A Yes.

20 Q Right.

21 A I'm sure that's what he said.

22 Q Okay. And that statement, who do you
23 believe he made that to on 12/14/2011?

24 A He made that to the Guilford Shellfish
25 Commission --

1 Q Okay.

2 A -- along with the officers, I believe.

3 Q Okay.

4 A Or the DEP. I don't know who he called
5 it in to.

6 Q Right. So, you're saying it's your
7 belief that on 12/14/2011, Mr. Walston made a
8 false statement, namely, you were stealing clams
9 from his bed?

10 A Yes.

11 Q And he made it to two sources. He may
12 have made it to the DEP officers and/or the
13 shellfish commission?

14 A Amongst many townspeople.

15 Q But we're going to get into that.

16 A Oh, okay.

17 Q I'm just talking about --

18 A Initially.

19 Q -- on that day, 12/14/11.

20 A Yes.

21 Q Okay. And that belief is articulated in
22 paragraph 4 of your complaint, where it says on --
23 it's paragraph 4. "On December 14, 2011, the
24 Defendant Walston falsely and maliciously stated
25 to the defendants" -- these two gentlemen

1 sitting -- these officers from the DEP who are
2 sitting here -- "that the Plaintiff" -- you --
3 "was trespassing on his clam beds and stealing
4 clams." Okay. And that is at the heart of this
5 lawsuit, that statement, correct?

6 A It isn't?

7 Q It is.

8 A Oh, it is. Yeah.

9 Q Yeah. Yeah. That's really --

10 A I'm sorry, I got a -- my ears are --

11 Q Yeah. Okay, I'll -- yeah.

12 A No, no, that's all right.

13 Q My throat gets dry so my tongue gets
14 twisted.

15 A That's all right.

16 Q So, that's the statement that you
17 believe was false, correct?

18 A That was false, right.

19 Q Yeah. And you also believe that after
20 December 14, 2011, he said to other people that on
21 December 14, 2011, you stole clams from his bed.
22 Correct?

23 A That, and along with telephone
24 conversations to the DEP of which I have a CD,
25 where Walston makes erroneous claims to DEP

1 officers. And I think there's 72 phone calls
2 there, in which Walston makes several allegations
3 to DEP officers and claiming I was stealing clams
4 from him after this.

5 Q Okay. So, your claim is not only on
6 12/14/11, but you have records that show he made
7 about 72 -- /

8 A No, not 72. Several phone calls. There
9 was collaboration, corroboration amongst other
10 people too, which there is actions being taken
11 against one of the other individuals.

12 Q Uh-hum.

13 A And I have --

14 Q But I want to get -- you mentioned
15 something about you had evidence of phone calls to
16 DEP.

17 A Yes.

18 Q What evidence is that?

19 A I have a complete CD of phone calls made
20 between -- from this incident in December
21 subsequently for six months after that from DEP
22 officers in which complaints, erroneous complaints
23 were made and officers responding to complaints,
24 erroneous complaints, never checking with the
25 Department of Aquaculture to verify what was going

1 STATE OF CONNECTICUT

2 I, KRISTINE A. PARADIS, LSR 338, a Notary Public
3 duly commissioned and qualified in and for the State
4 of Connecticut, do hereby certify that pursuant to
5 Re-Notice, there came before me on the 21st day of
6 August, 2015, the following named person, to wit:
7 NICHOLAS CRISMALE, who was by me duly sworn to
8 testify to the truth and nothing but the truth; that
9 he was thereupon carefully examined upon his oath and
10 his examination reduced to writing under my
11 supervision; that this deposition is a true record of
12 the testimony given by the witness.

13 I further certify that I am neither attorney nor
14 counsel for, nor related to, nor employed by any of
15 the parties to the action in which this deposition is
16 taken, and further, that I am not a relative or
17 employee of any attorney or counsel employed by the
18 parties hereto, or financially interested in this
19 action.

20 IN WITNESS THEREOF, I have hereunto set my
21 hand this 10th day of September 2015.

22 Kristine Paradis

23 KRISTINE A. PARADIS, LSR #338
24 Licensed Shorthand Reporter

25 My Commission expires:
May 31, 2018

EX. 6

MISDEMEANOR SUMMONS AND COMPLAINT

MA 881402

DOCKET NO.	P.D. CASE NO.
------------	---------------

The undersigned officer complains that:

ON (Mo., Day, Year)	AT (Time)	IN (Offense Town)	TOWN CODE
---------------------	-----------	-------------------	-----------

NAME (Last, First, Middle, Initial)

ADDRESS (No., Street and City)

STATE ZIP + 4 DATE OF BIRTH RACE SEX

SOCIAL SECURITY NO. EYES HAIR HEIGHT WEIGHT

LICENSE AND MOTOR VEHICLE

DRIVER'S LICENSE NO. STATE

REGISTRATION NO. STATE MAKE/MODEL/STYLE YEAR COLOR

OWNED BY (Last, First, Middle Initial)

ADDRESS (No., Street and City) STATE

ON (Street or Highway; if Intersection, specify)

did commit the following MISDEMEANORS/VIOLATION(S)

1. Via Sheriff's License (Act) 26-192f

2. Larceny 4th 53a-125

3.

4.

ACTUAL SPEED POSTED LIMIT ROAD COND. TRAFFIC VISIBILITY AREA

BOND AMOUNT ICC/DOT NO. (Circle one) COMMERCIAL/HAZARD, MAT.

SIGNATURE (Officer) SHIELD NO. POLICE DEPARTMENT

COURT APPEARANCE (Month, Day, Year) AT (Time)

IS REQUIRED ON: ADDRESS OF COURT

I promise to appear in court as scheduled above and to comply with the conditions of release stated on the back of this form. I have read/had read to me the notice on the back of this form and I understand it.

PHOTO I.D. SIGNATURE (Person receiving this complaint)

CONNECTICUT SUPERIOR COURT POLICE COPY

JD-CR-1 Rev. 2-99

POLICE COPY

COURT ABSTRACT - CONNECTICUT JUDICIAL BRANCH

JD-CR-43 Rev. 5-07

03/20/2014

NAME (Last, first, middle, etc)
CRISMALE NICHOLAS J

PAGE DOCKET NO.
1 NNH-CR11-0124273-T

DISP COURT
NNH - NEW HAVEN JD

REV.

75 KIMBERLY DR
GUILFORD CT 06437

TICKET NO(S)
A661402

DISP DATE
03/19/2014

TYPE M

DATE FILED

SEX M

LICENSE NO.

STATE CT

REGISTRATION

ERASURE

DISP DATE

YO

AKA

OFFENSE NAME

LARCENY 6

TYPE M

CLASS C

COUNT

ORIGINAL CHARGE

TYPE M

CLASS U

COUNT

PLEA NG

JOINT NG

W/O SHILLFISH REG

DSP CHARGE

TYPE M

CLASS U

COUNT

ORIGINAL CHARGE

TYPE M

CLASS U

COUNT

PLEA NG

JOINT NG

FINE

REMITTED

OTHER FEES

JAIL

ES

PROB

COND DSCHG

SPEC PAROLE

DV

CIS

SI

COST

BOND FORFEIT

DEPT CASE NO

POLICE DEPT

SHIELD NUMBER

OFF TOWN

ARREST DATE

MESSAGE

OTHER CASE NUMBERS

S740

0604

060

12/14/2011

EX. 7

04/19/2012
0956

Dispatch: DEEP emergency dispatch
Caller: yeah is anyone on patrol out today on the water?
D: pardon?
C: is anybody out on patrol on the water today down towards uh, Branford?
D: which water, you mean the Long Island Sound?
C: yeah
D: I don't know, why, what do you got going on?
C: well, I got um, Nick, uh, Nicholas Crismale stealing from my lot which he's already got convicted of and he's going to court six months ago and he's back over there again stealing from me right now - again.
D: what's that about?
C: Um, it's lot 562 in Branford
D: He's out there right now?
C: yep, he's out there right now. And he's ...
D: What road can an officer be there?
C: Um Old Quarry Road
D: What's your name?
C: Christopher Walston - CW Shellfish company
D: What's your phone number?
C: 203-915-6887
D: okay
C: alright, thank you.

04/19/12 & 04/19/2012
0958
[noise - inaudible]

04/19/2012
0958

DEEP: DEEP

Caller: Hey Christopher Walston is calling to say that Nick Crismale is stealing from his beds, currently. Down in Branford, lot 562 which can be seen from Old Quarry Road.

DEEP: from Old Quarry Road?

C: yes
D: let me get out my notebook. Alright, Nick Crismale again.
C: yeah, that's what he says.
D: NC is the one taking them?
C: yep, Comp is Christopher Walston. I'll give you his number. 203-915-6887
D: (repeats number)

C: yep
D: and you said you can see it from Old Quarry Road?
C: yep
D: and what was the bed number again?
C: lot 562
D: and 562 is Chris'?
C: I guess, I hope so.
D: (laughs) ok, I'll give him a shout.
C: alrighty
D: thanks man

04/19/2012
10:07 [just noise - inaudible]

04/19/2012
10:09

DEEP: DEEP

C: yeah DeFelice may need somebody from east marine to help them
D: what's he got?
C: possible shell fishing violation
D: Where?
C: Branford.
D: want me to go fly down there?
C: maybe somebody can call him, figure out what he needs.
D: ok
C: he wants to go out on a boat but he can't go by himself.
D: I'll call him, thanks, goodbye

04/19/2012
11:02 & 1109

D: DEEP emergency dispatch
De: hey, it's DeFelice
D: hey
De: can you hear on this phone at all?
D: yeah
De: okay, my state phone has no signal and of course my portable would never work
D: why would that happen
De: seriously.
D: (laughs)
De: figure if you're trying to raise me probably get me up on this
D: okay (writes down number)
De: I don't know, Wolfie said he was on his way down
D: yeah he said um, Branford area?

De: yeah, I'm down Old Quarry Road, towards the end, and then there's a private road
And if you just take that middle private driveway down there it's all the way on the
end.
D: ok
De: I'm on the farthest most tip but uh could you do me a favor? Could you check
Crismaldi, see what he has for commercial fishing and aquaculture permits and
what have you. I know uh, Chamicki just pinched him not that long ago.
Still there?
D: Yeah - what's the guys name?
De: I believe it's C-r-i-s-m-a-l-d-i
D: what is it Nick?
De: Yeah
D: it's C-r-i-s-m-a-l-e, commercial fish license #4, oh that was mid-summer
De: yeah
De: are you pulling up any numbers or anything?
D: hold on it's taking a long time
De: I'll wait
D: Nick Crismale - no active (inaudible)
De: Yeah I don't know if he got suspended from the December incident. No?
D: it doesn't say on here it just says ...
De: court and suspension are two different things

04/19/2012
11:12

De: DeFelice
D: hi it's Robin
De: hey
D: okay so what numbers are you looking for? Cus there's like a couple of different
ones.
De: ~~which one or what is um what do you got um for the fish license commercial that is~~
~~still active supposedly he has a search permit from aquaculture but does that get~~
~~me even in our database or no?~~
D: I don't think so. That wouldn't be in federal where all his licenses and stuff would
be. I'm having Mike Clifford meet with him though. ~~I not all that familiar with the~~
~~commercial stuff but...~~
De: ~~yeah neither~~ *Interesting*
D: I'm having a little bit of trouble, so he, there's like no licenses, he's got a ~~PH~~ *What is this?*
plate number um, but when he ... I talked to him this morning. When he called in this
morning. What he said was that he was going out surveying
De: yeah?
D: so that he would be going to the lots that he gave me picking up the stuff, looking at
them cuz I guess he's trying to buy the lots
De: sheesh

EX. 8

Political Charges Fly Prior To Rare Shellfish Poaching Trial

March 10, 2014 | By GREGORY B. HLADKY, ghladky@courant.com

A jury trial over an alleged case of clam poaching is set to begin later this month in New Haven Superior Court.

The man state officials are accusing of shellfish piracy is Nicholas Crismale, a veteran Branford fisherman and president of the Lobstermen's Association of Connecticut. His sixth-degree larceny case is coming to trial at the same time that Connecticut officials are seeking to strengthen state laws against shellfishing thieves.



Nicholas Crismale, a veteran Branford fisherman who is president of the... (Stephen Dunn, Hartford)

Crismale insists state officials are using the 2011 incident to discredit him because of his criticism of their handling of the lobster crisis in Long Island Sound — an accusation state officials deny.

"Our officers arrested Mr. Crismale only because the circumstances and facts of this situation were very compelling," said Dennis Schain, spokesman for the Connecticut Department of Energy and Environmental Protection.

Crismale has also filed a federal lawsuit charging a state environmental official with harassment. He claims a DEEP enforcement officer violated his rights by unfairly holding him in November 2012 at his Branford business for 30 minutes and searched his boat without a proper warrant. The state's response is that there was no harassment, that the officer was responding to another shellfishing theft complaint against Crismale, and that no warrant was needed because Crismale agreed to the inspection of his boat.

State Sen. Edward Meyer, co-chairman of the legislature's Environment Committee, said he's gotten multiple complaints from at least two different fishermen that Crismale "stole oysters from their leased beds."

Crismale acknowledged that he's been the target of numerous accusations about shellfish piracy over the years. "[State officials] absolutely have had multiple complaints," Crismale said. "They have complaints about me when I wasn't even the captain of the boat — my partner was captain."

"They're all erroneous," Crismale insisted. He points out that he's never been convicted on any shellfish poaching complaints.

According to state records, it was Christopher Walston's leased clam bed that Crismale was over when he was arrested by the state.

"All I know is I nailed him, and I nailed him good," said Walston, operator of CW Shellfish Co. of Guilford, who once worked for Crismale's shellfishing operation.

Crismale denies he ever intended to steal anyone's clams.

"I'm not guilty of what they claim," Crismale insisted. He said state officials took advantage of an ambiguous situation "to discredit me... They've ruined my business, my personal life, my relationship with other companies."

His trial is now scheduled for March 17, 18 and 19. The state charges against Crismale have been reduced to a single sixth degree count, punishable by up to three months in jail and/or a fine of up to \$500.

According to Crismale, state officials offered a plea bargain that would involve him losing his shellfishing license for a year. "It was absurd," Crismale said of the deal, saying he immediately turned it down.

"I believe it's political," said Crismale.

Shellfishermen like Crismale and Walston lease beds in Connecticut waters from the state Department of Agriculture's aquaculture bureau. Each bed is supposed to be marked with buoys and flags, and GPS (global positioning systems) can be used to prevent any mistakes.

Meyer said state records show Connecticut officials receive an average of 500 complaints a year about alleged shellfish theft from state-leased beds along the coast. Those records indicate that only about 30 complaints result in some sort of state action, according to Meyer.

State officials arrested Crismale in December 2011, claiming he was illegally harvesting clams from Walston's state-leased bed off Guilford. Crismale blames the situation on bad information he says he was given by the state aquaculture agency.

That's not what state environmental police reported.

According to the arrest record, Crismale's boat (the Mighty Maxx) was hauling up clams from Walston's shellfish lease when state officers arrived shortly after noon on Dec. 14, 2011. The report states that Crismale claimed he was only "a couple hundred feet" off his own shellfish bed, but the officers determined through GPS that Crismale's bed was at least a half-mile away.

Walston says it's very difficult to catch someone stealing shellfish because other boats (particularly those manned by state environmental police) can be spotted so far across the water.

Crismale suggests that his arrest could be retaliation for an embarrassing vote by the lobstermen's association in November 2011 – the month before his shellfishing arrest.

That vote by association members expressed "no confidence" in the state Department of Energy and Environmental Protection's ability to manage and protect Long Island Sound's troubled lobsters.

The Sound's lobster population crashed in 1999 and has never recovered. Marine scientists attributed the lobster's decline to global warming, saying it left them more vulnerable to disease and pollution. Many lobstermen, including Crismale, blamed the spraying of the anti-mosquito pesticides methoprene and resmethrin as part of a state campaign against the spread of the West Nile virus.

Crismale's case is one of three pending against alleged shellfish pirates. At a legislative hearing last month, state officials asked lawmakers to broaden a law aimed at punishing oyster pirates.

Walston believes the state's credibility when it comes to enforcing shellfish laws is at stake. "Everybody's watching this case," he says.

DOCKET NO.: NNH-CV14-6049358S : SUPERIOR COURT
NICHOLAS CRISMALE : J.D. OF NEW HAVEN
VS. : AT NEW HAVEN
CHRISTOPHER WALSTON, et. al. : SEPTEMBER 8, 2016

CHRISTOPHER WALSTON'S REPLY TO PLAINTIFF'S OBJECTION TO MOTION FOR SUMMARY JUDGMENT

FACTS:

On March 4, 2016, the defendant, Christopher Walston, moved for summary judgment on Counts One and Two of the complaint filed by the plaintiff, Nicholas Crismale. On April 7, 2016, the plaintiff filed an objection. Walston files this reply.

Count One, Defamation: The first statement, found at paragraph 4, is protected by qualified immunity because it was made to a law enforcement officer and the plaintiff must prove malice. See *Gallo v. Barile*, 284 Conn. 459, 463-64 (2007). Crismale does not cite to any law that disputes this. Crismale does not direct the court to any law that refutes the arguments made by Walston in his motion for summary judgment. Crismale does not provide the court with any evidence that rebuts Walston's evidence. Instead, Crismale boldly states there is "an issue of fact" and cites to (1) vague unauthenticated statements¹ and (2) the statement alleged in paragraph 6 of his complaint.

¹ Walston objects to the court considering exhibit 7 since it is unauthenticated, full of hearsay and vague and ambiguous. "Only evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment and the applicable provisions of our rules of practice contemplate that supporting [or opposing] documents . . . be made under oath or be otherwise reliable." *Rockwell v. Quintner*, 96 Conn. App. 221, 234 n.10, 899 A.2d 738, cert. denied, 280 Conn. 917, 908 A.2d 538 (2006); *Schratwieser v. Hartford*

The second statement, found at paragraph 6, fits into the definition of an opinion because it was a personal comment about another's conduct that has some basis in fact. Crismale does not dispute the law cited by Walston. Instead, Crismale cites law that is inapplicable and makes arguments not supported by the facts.

McHale v. W.B.S. Corp., 187 Conn. 444, 447 (1982) is distinguishable because it does not address defamation, but malicious prosecution and concerned "[t]he narrow issue in the case before us is to determine the extent to which falsity of the information provided to the public officer diminishes the private person's immunity" after the criminal trial ended in a dismissal of the charges after a witness testified that the defendant advised him not to tell the truth. *Id.*, 447-449.

Rioux v. Barry, 283 Conn. 338, 346 (2007) is distinguishable because it does not address defamation, but arises out of vexatious litigation and interference with a contract.

Crismale then argues, akin to a paroxysm with no factual or legal basis, that Walston's statement to the Hartford Courant cannot "fairly be describes as an opinion . . . because it was presented as a statement of historical fact by the speaker shortly before the criminal trial." What legal precedent does Crismale direct the court to make this conclusion concerning an opinion? Crismale fails to cite to any legal precedent. If Crismale was correct, any time a witness gave a statement concerning an opinion of innocence or guilt to a journalist concerning a pending case, it would subject the witness to a defamation claim.

Cesualty Ins. Co., 44 Conn. App. 754, 756 n.1, 692 A.2d 1283, cert. denied, 241 Conn. 915, 696 A.2d 340 (1997).

Count Two, Malicious Prosecution: On April 21, 2016, the court (*Wilson, J.*) granted judgment in favor of the co-defendants, Samorajczyk and Chenacki, on Crismale's malicious prosecution.

At page 5 of its opinion, the court states "The core of the plaintiff's opposition is that the plaintiff's perception of the events of December 14, 2011, is different from EnCON defendants' perception In determining probable cause, however, the only perception that matters is that of the arresting officer. In turn, the plaintiff bears the burden of proving affirmatively that the officers had no reasonable ground for the arrest." The court then found "the EnCON defendants had probable cause to determine that the plaintiff engaged in illegal activity. Therefore, because of probable cause is an absolute protection against a claim of malicious prosecution . . . the plaintiff's malicious prosecution claims against the EnCON defendants must fail as a matter of law." If the court determined the only perception that matters is that of the arresting officers, Samorajczyk and Chenacki, *and* found there was probable cause, then the court *must* find in favor of Walston.

Crismale cites *Falls Church Group, Ltd. v. Tyler, Cooper & Alcorn, LLP*, 281 Conn. 84, 99, 912 A.2d 1019 (2007), in support of her claim. Yet, that case does *not* apply because the language Crismale directs the court to *specifically* addresses probable cause in the context of vexatious litigation.

None of Crismale's arguments refute, quibble or distinguish the law cited by Walston, which is also the law the court based its decision on when it granted Samorajczyk and Chenacki's motion for summary judgment. That includes what the law considers to (1)

"initiate" a proceeding, (2) "probable cause" and (3) "malice." Instead, Crismale argues at page 7 of his objection "but for Walston's call on December 14, 2011, no arrest would have occurred." This is pure argument and not supported by any statements, let alone evidence necessary to rule on a motion for summary judgment. Crismale fails to cite to any authority in support of this argument. This argument also is contradictory to Judge Wilson's April 21, 2016 decision "[i]n determining probable cause, however, the only perception that matters is that of the arresting officer." If the court were to credit Crismale's argument, then the penalties for citizens contacting law enforcement would significantly outweigh the societal benefits.

Crismale has failed to offer any evidence to challenge the probable cause existed at the time of the arrest, made by Samorajczyk and Chenacki, which defeats any claim for malicious prosecution. The court (*Wilson, J.*) agreed on April 21, 2016.

CONCLUSION:

Crismale has failed to "substantiate [his] adverse claim by showing that there is a genuine issue of material fact, together with the evidence disclosing the existence of such an issue." *Chadha v. Charlotte Hungerford*, 97 Conn. App. 527, 537, 906 A.2d 14 (2006). The court should grant Walston's motion for summary judgment on Counts One and Two for the reasons articulated in his March 7, 2016 motion for summary judgment and memorandum of law in support and this reply.

The Defendant,
Christopher Walston

By 

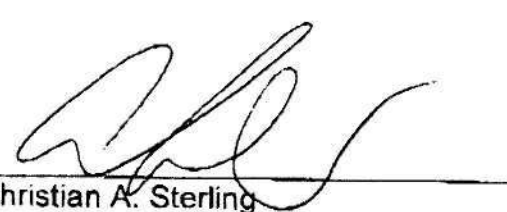
Christian Sterling, His Attorney
Katz and Seligman
130 Washington Street
Hartford, CT 06106
Tel.: 860-547-1857
Juris No. 101040

CERTIFICATION

This is to certify that a copy of the foregoing was mailed via first-class mail, postage prepaid, to all counsel of record, on this 8th day of September, 2016.

VIA FAX: 203-776-9494
John Williams Associates LLC
51 Elm Street Suite 409
New Haven, CT 06510

Vincent Cervoni, Esq.
221 North Main Street
Wallingford, CT 06492


Christian A. Sterling
Commissioner of the Superior Court

DOCKET NO. CV-14-6049358-S : SUPERIOR COURT
: DEC 27 2016
NICHOLAS CRISMALE : JUDICIAL DISTRICT OF NEW HAVEN
: CHIEF CLERK'S OFFICE
V. : AT NEW HAVEN
: DECEMBER 27, 2016
CHRISTOPHER WALSTON

MEMORANDUM OF DECISION
MOTION FOR SUMMARY JUDGMENT, NO. 120

FACTS

This case arises from the arrest of the plaintiff, Nicholas Crismale (Crismale), which took place on a commercial fishing boat in Long Island Sound. On August 27, 2014, Crismale filed an eight count complaint against the defendants, Christopher Andrew Walston (Walston), Jeffrey Samorajczyk (Samorajczyk), and Todd Aaron Chemacki (Chemacki). Crismale alleges the following relevant facts. "The plaintiff is a commercial fisherman who resides in Guilford, Connecticut." (Compl. ¶ 1.) "The defendant Walston is a resident of Guilford who is employed by his father in the stair business during the winter months and in the spring and summer months does some shell fishing." (Compl. ¶ 2.) "The defendants Samorajczyk and Chemacki are law enforcement officers employed by the Connecticut Department of Environmental Protection. They are sued only in their individual capacities." (Compl. ¶ 3.) "On December 14th, 2011, the defendant Walston falsely and maliciously stated to the defendants Samorajczyk and Chemacki that the plaintiff was trespassing on his clam beds and stealing his clams." (Compl. ¶ 4.) "As a result, the plaintiff was arrested and prosecuted on criminal charges of which he was innocent, and of which the defendant Walston knew he was innocent, and incurred economic losses associated with

Judgment entered December 27, 2016
Counsel/self-rep. ind. notified 12-27-2016
By ☒ JDNO ☒ Copy of memo ☐ other
☒ Copy to Reporter of Judicial Decisions

120.10

his defense against the said false charges and also suffered humiliation and anxiety.” (Compl. ¶ 5.) “Following the plaintiff’s arrest, the defendant Walston stated to a reporter for the Hartford Courant concerning the plaintiff’s arrest: ‘I nailed him and I nailed him good.’” (Compl. ¶ 6.) “On March 18, 2014, a jury in the Superior Court at New Haven found the plaintiff not guilty of all charges.” (Compl. ¶ 7.) Thus, the two alleged statements by Walston at issue are the one made to the Connecticut Department of Environmental Protection (EnCON) and the one made to the Hartford Courant. Counts one and two are directed at Walston, wherein count one sounds in slander and count two in malicious prosecution. Counts three through eight are not directed at Walston, but at Samorajczyk and Chemacki, wherein counts three and four sound in malicious prosecution; counts five and six in unreasonable search and seizure in violation of the fourth amendment to the United States constitution; and counts seven and eight in deprivation of property without due process in violation of the fourteenth amendment to the United States constitution.

On April 21, 2016, summary judgment was granted for defendants Samorajczyk and Chemacki on the ground that there was no genuine issue of material fact that the decision to arrest the plaintiff was supported by probable cause and, therefore, Samorajczyk and Chemacki were entitled to qualified immunity. *Crismale v. Walston*, Superior Court, judicial district of New Haven, Docket No. CV-14-6049358-S (April 21, 2016, *Wilson, J.*) (Docket Entry no. 113.20.) On March 7, 2016, Walston filed the motion for summary judgment that is presently before the court; (Docket Entry no. 120); accompanied by a supporting memorandum of law. (Docket Entry no.

121.)¹ On April 7, 2016, the plaintiff filed an objection accompanied by a supporting memorandum of law; (Docket Entry no. 122);² and on September 8, 2016, Walston filed a corresponding reply. (Docket Entry no. 125.) Oral argument was heard on the motion on September 12, 2016 at short calendar.

DISCUSSION

“[S]ummary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” (Internal quotation marks omitted.) *Cefaratti v. Aranow*, 321 Conn. 637, 645, 138 A.3d 837 (2016).

“A material fact is a fact that will make a difference in the result of the case. . . . The facts at issue are those alleged in the pleadings. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue as to all material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. . . . [T]he party adverse to such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine

¹Walston’s exhibits include: (A) an affidavit of Walston; (B) Crismale’s response to interrogatories and requests for production; (C) an affidavit of Chemacki; (D) an affidavit of Samorajczyk; (E) a deposition of Hector Avila; (F) a deposition of Santos Bertrand; (G) a deposition of Sandoval Maynor; (H) a deposition of Crismale.

²Crismale’s exhibits include: (1) testimony of Walston at Crismale’s criminal trial; (2) testimony of Crismale at Crismale’s criminal trial; (3) an affidavit of Samorajczyk; (4) an affidavit of Chemacki; (5) a deposition of Crismale; (6) a misdemeanor summons and complaint issued to Crismale; (7) a transcript of phone calls; (8) the Hartford Courant article at issue.

issue of material fact.” (Internal quotation marks omitted.) *Recall Total Information Management, Inc. v. Federal Ins. Co.*, 147 Conn. App. 450, 456, 83 A.3d 664 (2014), *aff’d*, 317 Conn. 46, 115 A.3d 458 (2015). “[T]he genuine issue aspect of summary judgment requires the parties to bring forward before trial evidentiary facts, or substantial evidence outside the pleadings, from which the material facts alleged in the pleadings can warrantably be inferred. . . . A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case.” (Citation omitted; internal quotation marks omitted.) *Buell Industries, Inc. v. Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002). “A genuine issue has been variously described as a triable, substantial or real issue of fact . . . and has been defined as one which can be maintained by substantial evidence.” (Citation omitted; internal quotation marks omitted.) *United Oil Co. v. Urban Development Commission*, 158 Conn. 364, 378, 260 A.2d 596 (1969).

“[T]he party moving for summary judgment . . . is required to support its motion with supporting documentation, including affidavits.” (Internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of America*, 310 Conn. 304, 324 n.12, 77 A.3d 726 (2013). “The existence of the genuine issue of material fact must be demonstrated by counter-affidavits and concrete evidence.” (Internal quotation marks omitted.) *Bruno v. Whipple*, 162 Conn. App. 186, 214, 130 A.3d 899 (2015), *cert. denied*, 321 Conn. 901, 138 A.3d 280 (2016). “[O]nly evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment. . . . Practice Book § [17-45], although containing the phrase including but not limited to, contemplates that supporting documents to a motion for summary judgment be made under oath or be otherwise reliable. . . . [The] rules would be meaningless if they could be circumvented by filing

[unauthenticated documents] in support of or in opposition to summary judgment.” (Emphasis omitted; internal quotation marks omitted.) *Nash v. Stevens*, 144 Conn. App. 1, 15, 71 A.3d 635, cert. denied, 310 Conn. 915, 76 A.3d 628 (2013). The trial court has discretion in determining whether to consider documentary evidence submitted by a party in support of or in opposition to a motion for summary judgment. See *Bruno v. Whipple*, 138 Conn. App. 496, 506, 54 A.3d 184 (2012) (“Whether a trial court should consider documentary evidence submitted by a party in relation to a motion for summary judgment presents an evidentiary issue to which we apply an abuse of discretion standard.”) “Summary judgment in favor of the defendant is properly granted if the defendant in its motion raises at least one legally sufficient defense that would bar the plaintiff’s claim and involves no triable issue of fact.” (Internal quotation marks omitted.) *Serrano v. Burns*, 248 Conn. 419, 424, 727 A.2d 1276 (1999).

I

COUNT ONE - SLANDER

“Defamation is comprised of the torts of libel and slander: slander is oral defamation and libel is written defamation.” (Internal quotation marks omitted.) *Gleason v. Smolinski*, 319 Conn. 394, 430 n.30, 125 A.3d 920 (2015). “[T]o establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff’s reputation suffered injury as a result of the statement. . . . A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or

dealing with him. . . . Each statement furnishes a separate cause of action and requires proof of each of the elements for defamation.” (Citations omitted; footnote omitted; internal quotation marks omitted.) *Id.*, 430-31.

A

Walston’s statement to EnCON

“A defendant may shield himself from liability for defamation by asserting the defense that the communication is protected by a qualified privilege.” *Gambardella v. Apple Health Care, Inc.*, 291 Conn. 620, 628, 969 A.2d 736 (2009). “[S]tatements that a complaining witness makes to the police are subject to qualified immunity rather than absolute immunity.” *Gallo v. Barile*, 284 Conn. 459, 463, 935 A.2d 103 (2007). “When considering whether a qualified privilege protects a defendant in a defamation case, the court must resolve two inquiries. . . . The first is whether the privilege applies, which is a question of law The second is whether the applicable privilege nevertheless has been defeated through its abuse, which is a question of fact.” (Citation omitted.) *Gambardella v. Apple Health Care, Inc.*, *supra*, 291 Conn. 628.

1

Whether the Privilege Applies

Walston argues that a qualified privilege applies to his statement to EnCON because it is a statement made to law enforcement. Crismale argues that whether the statement applies is a question of fact for the jury, an argument which is directly contrary to *Gambardella v. Apple Health Care, Inc.*, *supra*, 628; and Crismale fails to put forth any case law to the contrary.

Therefore, the court concludes that there is no genuine issue of material fact that qualified immunity applies to Walston's statement to EnCON.

2

Whether the Privilege has been Defeated

Walston argues that the privilege has not been defeated because Crismale has failed to put forth any evidence to counter his averment that the statement was *not* made with malice, and was based on good faith observations. (Def.'s Mem. Supp. Ex. A, Docket Entry no. 121.) Crismale counters that "Walston admitted he was at least 500 yards away from the plaintiff's fishing boat when he called the authorities"; (Pl.'s Mem. Opp'n at 2, Docket Entry no. 122); and offers Walston's testimony at Crismale's criminal trial as evidence of this fact. (Pl.'s Mem. Opp'n Ex. 1 at 37, Docket Entry no. 122.)

"As a general matter, a qualified privilege in a defamation case may be defeated if it can be established that the holder of the privilege acted with malice in publishing the defamatory material." *Gambardella v. Apple Health Care, Inc.*, supra, 291 Conn. 630. "[A] qualified privilege is lost upon a showing of either actual malice, i.e., publication of a false statement with actual knowledge of its falsity or reckless disregard for the truth, or malice in fact, i.e. publication of a false statement with bad faith or improper motive." (Emphasis omitted.) *Id.* "A negligent misstatement of fact will not suffice [to show actual malice]; the evidence must demonstrate a purposeful avoidance of the truth. . . . Further, proof that a defamatory falsehood has been uttered with bad or corrupt motive or with an intent to inflict harm will not be sufficient to support a finding of actual malice . . . although such evidence may assist in drawing an inference of

7

knowledge or reckless disregard of falsity.” (Citations omitted; internal quotation marks omitted.) Id., 637-38. “[R]eckless disregard may be found when an individual publishes defamatory statements with a high degree of awareness of . . . probable falsity . . . or . . . entertained serious doubts as to the truth of [the] publication.” (Internal quotation marks omitted.) Id., 639. “[T]he operative question is not whether the defendants’ statements . . . were inaccurate or negligently made, or whether their assessments of [the plaintiff] were accepted Proof of malice requires far more than proof of negligence or proof of disagreement.” *Chadha v. Charlotte Hungerford Hospital*, 97 Conn. App. 527, 540-41, 906 A.2d 14 (2006).

“Whether the privilege has been lost because of abuse is a question *normally* for the jury.” (Emphasis in original.) *Burton v. American Lawyer Media, Inc.*, 83 Conn. App. 134, 139, 847 A.2d 1115, cert. denied, 270 Conn. 914, 853 A.2d 526 (2004). Nevertheless, the Appellate Court has repeatedly affirmed trial court determinations that there was no genuine issue of material fact as to whether the defendant made an allegedly defamatory statement with malice. See, e.g., *Mara v. Otto*, 127 Conn. App. 404, 13 A.3d 1134 (2011). In one such case, the Appellate Court affirmed the trial court’s grant of the defendants’ renewed motion for summary judgment on this ground where the defendants offered affidavits in which they averred that (1) they were acting within the scope of their administrative duties when they published statements regarding the plaintiff’s professional competency to the Department of Public Health; and (2) they did not submit any false allegations “willfully, deliberately or with malice aforethought.” (Internal quotation marks omitted.) *Chadha v. Charlotte Hungerford Hospital*, supra, 97 Conn. App. 538. The plaintiff in *Chadha* averred in an affidavit that the defendants did not submit any evidence to the department

demonstrating that their allegations regarding the plaintiff were true, that they were aware that the plaintiff's file did not reflect any occurrences of incompetent care, and that the board eventually exonerated the plaintiff of charges of inability to practice medicine. *Id.*, 540 n.11. The court found that the plaintiff's evidence failed to raise a factual issue with respect to actual malice because the plaintiff "[relied] on his own conclusory statements and personal assessment of the motives of the defendants" and did not offer "facts as would be admissible in evidence as required by Practice Book § 17-46." (Internal quotation marks omitted.) *Id.*, 540. Moreover, "[e]ven if one assumes that the plaintiff was exonerated of the defendants' allegations against him, that fact is not relevant to the issue of whether the defendants acted with malice when they made the statements that form the basis of the plaintiff's claim." *Id.*

Based on the foregoing authority, Walston's statement to EnCON does not defeat the applicable qualified immunity. Walston submitted an affidavit along with his motion for summary judgment wherein he averred that his statement was based on his observations of Crismale, was made in good faith, and was not made with malice. (Def.'s Mem. Supp. Ex. A, Docket Entry no. 121.) Crismale's reliance on the distance from which Walston observed Crismale's boat as evidence that Walston couldn't have possibly known that Crismale was on Walston's lot is incorrect in that it does not address Walston's sworn statement that he was viewing the boat *through binoculars*; (Def.'s Mem. Supp. Ex. A ¶ 9, Docket Entry no. 121); let alone the fact that this court has already acknowledged that EnCON investigation revealed that *Crismale was on Walston's lot*. See *Crismale v. Walston*, *supra*, Superior Court, Docket No. CV-14-6049358-S.

Therefore, the court concludes that there is no genuine issue of material fact that Walston's statement to EnCON is subject to immunity.

B

Walston's statement to the Hartford Courant

1

Whether the Privilege Applies

Walston argues that the privilege of fair comment applies to his statement to the Hartford Courant that "[he] nailed him and [he] nailed him good" because it "was public information and already disclosed *prior* to Walston's comments The fact that the plaintiff was arrested is a knowable, and true fact. Furthermore, Walston's comment about the arrest was merely a comment *of opinion* on the outcome of arrest that actually took place; there is no dispute that the plaintiff was arrested and charged." (Emphasis in original.) (Def.'s Mem. Supp. at 6, Docket Entry no. 121.)

"The privilege of 'fair comment,' which was one of the most important privileges realized at common law, was a qualified privilege to express an opinion or otherwise comment on matters of public interest." *Goodrich v. Waterbury Republican-American, Inc.*, 188 Conn. 107, 114, 448 A.2d 1317 (1982). "As a general rule . . . the privilege of fair comment applies to expressions of opinion." (Citations omitted; emphasis omitted.) *Id.*, 111 n.4. "An opinion . . . is a personal *comment* about another's conduct, qualifications or character that has some basis in fact." (Emphasis in original.) *Id.*, 111. "A statement can be defined as factual if it relates to an event or state of affairs that existed in the past or present and is capable of being known." *Id.* "This distinction between fact and opinion cannot be made in a vacuum . . . for although an opinion may

appear to be in the form of a factual statement, it remains an opinion if it is clear from the *context* that the maker is not intending to assert another objective fact but only his personal comment on the facts which he has stated. . . . Thus, while this distinction may be somewhat nebulous . . . [t]he important point is whether ordinary persons hearing or reading the matter complained of would be likely to understand it as an expression of the speaker's or writer's opinion, or as a statement of existing fact." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Id.*, 111-12.

"An opinion is privileged as fair comment only when the facts on which it is based are truly stated or privileged or otherwise known either because the facts are of common knowledge or because, though perhaps unknown to a particular recipient of the communication, they are readily accessible to him. . . . If the facts that are criticized or commented upon are not stated or known, however, then fair comment is no defense. The reason for this distinction is as follows: an opinion must be based upon facts; if the facts are neither known nor stated, then a defamatory opinion implies that there are undisclosed defamatory facts which justify the opinion." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Id.*, 117-18.

"[T]he privilege of fair comment requires [the court] to read the allegedly libelous articles in their totality, in the context in which they were published. . . . In order for a statement to be defended as fair comment it must be recognizable by the ordinary reasonable person as opinion and not as a statement of fact. . . . In applying this test, however, [t]he court must consider all the words used, not merely a particular phrase or sentence. In addition, the court must give weight to cautionary terms used by the person publishing the statement. Finally, the court must consider all

of the circumstances surrounding the statement, including the medium by which the statement is disseminated and the audience to which it is published.” (Citations omitted; footnote omitted; internal quotation marks omitted.) *Id.*, 120-21.

In *Goodrich*, the Supreme Court determined that colloquial and figurative expressions such as “sore spot,” “ghost town,” “up to its rooftop in troubles,” “mere shell of a shopping center” and “plagued by a host of traffic, conservation and financial worries” used to embellish facts about the plaintiff’s real estate development were statements of opinion subject to qualified immunity. *Id.*, 121-24. “[F]air comment may be severe and may include ridicule, sarcasm, and invective . . . and . . . the comment is not rendered unfair by the writer’s flippant style . . . or even by the use of gross exaggeration.” (Citations omitted; internal quotation marks omitted.) *Id.*, 123.

As to a matter of public concern: “It is well established that [t]he commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions . . . are without question events of legitimate concern to the public Indeed, [p]ublic allegations that someone is involved in crime generally are speech on a matter of public concern.” (Citation omitted; internal quotation marks omitted.) *Gleason v. Smolinski*, *supra*, 319 Conn. 415.

In the present case, the statement at issue is a matter of public interest because it involved the commission of a crime. See *id.* As to whether Walston’s comments to the Hartford Courant were of fact or opinion, “a reasonable person could only view [them] as pure expressions of opinion” *Goodrich v. Waterbury Republican-American, Inc.*, *supra*, 188 Conn. 124. First, Walston made the statement in the context of an ongoing criminal trial. To the extent that the comment could be interpreted as a comment on the upcoming trial, Walston could not have *known*

the outcome. It was clear that the statement did not “[relate] to an event or state of affairs that existed in the past or present and is capable of being known”; *Goodrich v. Waterbury Republican-American, Inc.*, supra, 188 Conn. 111; but speculated on the outcome of a future event. Speculation as to what *might be* does not equate to a statement of what *is* or *was*. See *Stevens v. Helming*, Superior Court, judicial district of New Haven, Docket No. CV-11-6019393-S (June 23, 2014, *Wilson, J.*), aff’d, 163 Conn. App. 241, 135 A.3d 728 (2016) (comment on outcome of ongoing investigation was not a statement of fact). To the extent that the comment could be interpreted as a comment on Crismale’s arrest, the statement “I nailed him and I nailed him good” is a colloquial figurative statement, much like those at issue in *Goodrich*, which our Supreme Court determined were of opinion rather than fact. *Goodrich v. Waterbury Republican-American, Inc.*, supra, 188 Conn. 121-124. For the foregoing reasons, the court concludes that there is no genuine issue of material fact that the qualified privilege of fair comment applies to Walston’s statement to the Hartford Courant.

2

Whether the Privilege has been Defeated

Walston argues that the privilege has not been defeated because Crismale has failed to put forth any evidence to counter his averment that the statement was *not* made with malice, and was based on good faith observations. (Def.’s Mem. Supp. Ex. A, Docket Entry no. 121.) Crismale counters that “[a]rguably, Walston made this statement to the press shortly before the plaintiff’s trial because he intended to damage Crismale’s reputation.” (Pl.’s Mem. Opp’n at 9, Docket Entry no. 122.)

In light of *Chadha v. Charlotte Hungerford Hospital*, supra, 97 Conn. App. 540-41, and *Nash v. Stevens*, supra, 144 Conn. App. 15, discussed previously in this memorandum regarding proof of malice and admissible evidence, Crismale's suppositions in his memorandum of law as to the intent of Walston's comments cannot support a genuine issue of material fact as to whether Walston's statement was made with malice. Therefore, the court concludes that there is no genuine issue of material fact that Walston's statement to the Hartford Courant is subject to immunity.

II

COUNT TWO - MALICIOUS PROSECUTION

Walston argues that Crismale's claim fails because he did not initiate or procure the subject criminal proceedings against Crismale since the arrest was based on Walston's complaint made on the day of arrest and the independent observations of the officers. Walston further argues that he acted with probable cause and that there is no evidence of malice. Crismale counters that "[b]ut for Walston's call on December 14, 2011, no arrest would have occurred. Walston contacted the [EnCON] police once again on April 19, 2012."³ (Pl.'s Mem. Opp'n at 7, Docket Entry no. 122.) Crismale argues that the comment made by Walston to the Hartford Courant and that he called EnCON again after the arrest is evidence of bad intent.

"An action for malicious prosecution against a private person requires a plaintiff to prove that: (1) the defendant initiated or procured the institution of criminal proceedings against the

³Exhibit 7 of Crismale's objection; (Docket Entry no. 122); which is a transcript of phone calls and submitted as evidence of this communication, is not authenticated and, therefore, is not admissible for the purposes of this motion. See *Nash v. Stevens*, supra, 144 Conn. App. 15.

plaintiff; (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice. *Zenik v. O'Brien*, 137 Conn. 592, 595, 79 A.2d 769 (1951); *Brodrib v. Doberstein*, 107 Conn. 294, 296-98, 140 A. 483 (1928); *McGann v. Allen*, 105 Conn. 177, 185, 134 A. 810 (1926); 3 Restatement (Second), Torts (1977) § 653; W. Prosser, Torts (4th Ed. 1971) § 119. The law governing malicious prosecution seeks to accommodate two competing and ultimately irreconcilable interests. It acknowledges that a person wrongly charged with criminal conduct has an important stake in his bodily freedom and his reputation, but that the community as a whole has an even more important stake in encouraging private citizens to assist public officers in the enforcement of the criminal law. 1 F. Harper & F. James, Torts (1956) § 4.11.

“The policy of encouraging private citizens to assist in law enforcement is vindicated, in the law of malicious prosecution, by providing a limited immunity in the form of the first element that the plaintiff must prove to maintain his cause of action. A private person can be said to have initiated a criminal proceeding if he has insisted that the plaintiff should be prosecuted, that is, if he has brought pressure of any kind to bear upon the public officer’s decision to commence the prosecution. *Fatone v. DeDomenico*, 161 Conn. 576, 577, 290 A.2d 324 (1971); *Zenik v. O'Brien*, supra, 596. But a private person has not initiated a criminal proceeding if he has undertaken no more than to provide potentially incriminating information to a public officer. In such a case, if the defendant has made a full and truthful disclosure and has left the decision to prosecute entirely in the hands of the public officer, he cannot be held liable for malicious prosecution. See *White*

v. *Chicago, Burlington & Quincy Railroad*, 417 F.2d 941, 943 (8th Cir. 1969); *Fatone v. DeDomenico*, supra; *Brodrub v. Doberstein*, supra, 298; *Jensen v. Barnett*, 178 Neb. 429, 431, 134 N.W.2d 53 (1965); *Archer v. Cachat*, 165 Ohio St. 286, 287-88, 135 N.E.2d 404 (1956); *Rose v. Whitbeck*, 277 Or. 791, 797, 562 P.2d 188 (1977) and 278 Or. 463, 468-69, 564 P.2d 671 (1977); 3 Restatement (Second), Torts (1977) § 653, comment g; W. Prosser, Torts (4th Ed. 1971) § 119, p. 837; 1 F. Harper & F. James, Torts (1956) § 4.3, p. 306.

"The narrow issue in the case before us is to determine the extent to which falsity of the information provided to the public officer diminishes the private person's immunity. It is conceded that a private person cannot escape liability if he knowingly presents information that is false; false information necessarily interferes with the intelligent exercise of official discretion. The problem arises when the information proves to be false, although the informer in good faith believed it to be true. The defendants requested that the trial court instruct the jury that 'the informer is not liable though the information proves to be false and his belief was one that a reasonable man would not entertain.' This request to charge was taken verbatim from 3 Restatement (Second), Torts (1977) § 653, comment g. The trial court charged instead that the test was whether the informer 'had reasonable grounds to believe [that the information] was true' That language is found, in dictum, in *Zenik v. O'Brien*, supra, 596, although, earlier, in *Brodrub v. Doberstein*, supra, 298, we had adopted a standard closer to that of the Restatement when we held that no action would lie against a person who 'fully and fairly states all the material facts within his knowledge to the prosecuting attorney and in good faith abides by his decision as to whether they constitute probable cause for believing that a crime has been committed' We now affirm that the proper standard

is that of *Brodrub v. Doberstein* and the Restatement. See *Gogue v. MacDonald*, 35 Cal. 2d 482, 487, 218 P.2d 542 (1950); *Pratt v. Kilborn Motors, Inc.*, 48 Ill. App. 3d 932, 936, 363 N.E.2d 452 (1977); *Newton v. Spence*, 20 Md. App. 126, 135-36, 316 A.2d 837 (1974); *Renda v. International Union, UAW*, 366 Mich. 58, 84, 114 N.W.2d 343 (1962); *Epling v. Pacific Intermountain Express Co.*, 55 Ohio App. 2d 59, 62, 379 N.E.2d 239 (1977).

"The trial court was therefore in error in refusing to instruct the jury in accordance with the defendants' request to charge. In our judgment, a proper concern for private assistance to public law enforcement officers requires immunity from liability for malicious prosecution for the citizen who, in good faith, volunteers false incriminating information. To impose upon such a citizen the burden of having his conduct measured, retrospectively, by the standard of a reasonable person, would necessarily have a chilling effect on the willingness of a private person to undertake any involvement in the enforcement of the criminal laws.

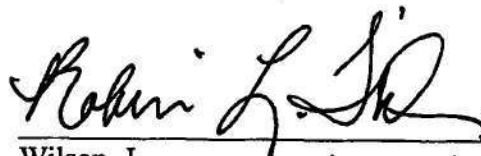
"In reaching this decision, we emphasize that we are addressing only one element of the cause of action for malicious prosecution. Our adoption of a good faith standard is limited to the issue of the defendants' initiation of criminal proceedings. We recognize that a person who has taken a more vigorous role, who has insisted that criminal proceedings go forward, has automatically 'initiated' criminal proceedings. Once the initiation threshold is crossed, greater involvement signals greater risks. The liability of any person who has initiated criminal proceedings depends upon whether he has acted with probable cause, with 'the knowledge of facts sufficient to justify a reasonable person in the belief that there are reasonable grounds for prosecuting an action.' *Vandersluis v. Weil*, 176 Conn. 353, 356, 407 A.2d 982 (1978); *Zenik v.*

O'Brien, supra, 597. Today's decision does not alter this well-settled law of probable cause." *McHale v. W.B.S. Corp.*, 187 Conn. 444, 447-51, 446 A.2d 815 (1982).

Walston submitted affidavits of the arresting officers, who both attest that probable cause existed based upon (a) Walston's complaint; (b) their own observations; (c) notification by the Bureau of Aquaculture that Crismale's boat was on Walston's lot; and (d) Crismale's admission to being off his lot. (See Def.'s Mem. Supp. Exs. C & D, Docket Entry no. 121.) Therefore, the defendant has submitted evidence that the decision to arrest Crismale was made without *any pressure* from Walston, and was instead made on the basis of the information provided by Walston and the independent observations of the officers. Crismale fails to offer any admissible evidence to the contrary. Moreover, with regards to Walston's interaction with EnCON, Crismale alleges nothing other than that "[o]n December 14, 2011, the defendant Walston falsely and maliciously stated to the defendants Samorajczyk and Chemacki that the plaintiff was trespassing on his clam beds and stealing his clams." (Compl. ¶ 4.) Crismale, therefore, alleges nothing other than that Walston provided potentially incriminating *information* to EnCON, rather than *pressure*. Because the court grants Walston's motion for summary judgment on this issue alone; see *Serrano v. Burns*, supra, 248 Conn. 424 ("[s]ummary judgment in favor of the defendant is properly granted if defendant in its motion raises at least one legally sufficient defense that would bar the plaintiff's claim and involves no triable issue of fact."); it is not necessary to examine the parties' other arguments. Therefore, the court concludes that there is no genuine issue of material fact that Walston did not initiate or procure the subject criminal proceedings against Crismale and therefore, Walston is entitled to judgment as a matter of law with respect to the malicious prosecution claim.

CONCLUSION

For the foregoing reasons, the defendant's motion for summary judgment is granted because there is no genuine issue of material fact that the defendant is entitled to qualified immunity as a matter of law with respect to the defamation claims; and there is no genuine issue of material fact as to the malicious prosecution claim that he is entitled to judgment as a matter of law.



Wilson, J. 12/27/2016

STATE OF CONNECTICUT

DOCKET NO.: NNH-CV14-6049358-S : SUPERIOR COURT
NICOLAS CRISMALE : JUDICIAL DISTRICT OF
75 KIMBERLY DRIVE NEW HAVEN
GUILFORD, CT 06437
V. : AT NEW HAVEN

CHRISTOPHER ANDREW WALSTON
426 STATE STREET
GUILFORD, CT 06437

JEFFREY SAMORAJCZYK
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
79 ELM STREET
HARTFORD, CT 06106

TODD AARON CHENACKI
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
79 ELM STREET
HARTFORD, CT 06106

: DECEMBER 27, 2016

Present: The Honorable Robin Wilson, Judge

JUDGMENT

This action by writ and an eight count complaint, seeking damages, came to this court on September 16, 2014.

And thence to later dates when the defendants, Chenacki and Samorajczyk, moved for summary judgment on counts three through eight of the plaintiff's complaint. The Court, having heard the parties, finds the issues for defendants Chenacki and Samorajczyk and adjudges that summary judgment enter in their favor as to counts three through eight.

And thence to later dates when the defendant, Walston, moved for summary judgment on counts one and two of the plaintiff's complaint. The Court, having heard the parties, finds the issues for defendant and adjudges that summary judgment enter in his favor as to counts one and two.

Whereupon it is adjudged that judgment enter in favor of the defendants.



Assistant Clerk

☒ APPEAL ☐ JOINT APPEAL ☐ CROSS APPEAL ☐ AMENDED APPEAL ☐ CORRECTED FORM

JD-SC-33 Rev. 7-16

P.B. Sections 3-8, 60-7, 60-8, 62-7, 62-8, 63-3, 63-4, 63-10

C.G.S. Sections 31-301b, 51-197f, 52-470

All appeals must be filed electronically unless an exemption from the requirements of electronic filing has been granted or you are an incarcerated self-represented party. For further information about e-filing or this form, see the Appeal Instructions, form JD-SC-34.

☐ To Supreme Court ☒ To Appellate Court

Name of case (State full name of case)

CRISMALE, NICOLAS v. WALSTON, CHRISTOPHER ANDREW Et Al

Type of appellate matter

Appeal

Trial Court History	Tried to Court		Trial court location	
	HON. ROBIN L. WILSON		235 CHURCH STREET New Haven CT 06510	
	Trial court judges being appealed		List all trial court docket numbers, including location prefixes	
	All other trial court judges who were involved with the case		CHRISTOPHER ANDREW WALSTON Continued	
	Date of judgment(s) or decision(s) being appealed		Date of issuance of notice on any order on any motion that would render judgment ineffective	
	12/27/2016		12/27/2016	
Appeal	Case type		Date for filing appeal extended to	
	Civil			
	For Civil/Family Case Types, Major/Minor code:		<input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Order of Temporary Custody	
	T50		<input type="checkbox"/> Other	
	Appeal filed by (Party name(s))			
	Nicholas J Crismale			
Appearance	From (the action that constitutes the appealable judgment or decision)			
	Decision for Motion of Summary Judgement			
	If this appeal is taken by the State of Connecticut, provide the name of the judge who granted permission to appeal and the date of the order			
	Statutory Basis for Appeal to Supreme Court			
	By (Signature of counsel of record)		Telephone number	Fax number
	crism6678		203-453-6678	
Certification	Type name and address of counsel of record filing this appellate matter (This is your appearance; see Practice Book Section 62-8)		E-mail address	
	Nicholas J Crismale 75 Kimberly Dr Guilford CT 06437		branfordlobster@sbcglobal.net	
	<input checked="" type="checkbox"/> "X" one if applicable <input checked="" type="checkbox"/> Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court.			
	<input type="checkbox"/> Counsel or self-represented party who files this appeal is appearing in place of:		Name of counsel of record	
	Date to be delivered		Juris number (If applicable)	
	01/17/2017			
Required Documents	I certify that a copy of the appeal form I am filing will immediately be delivered to each other counsel of record and I have included their names, addresses, e-mail addresses and telephone and facsimile numbers; the appeal form has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the appeal form complies with all applicable rules of appellate procedure in accordance with Practice Book Sections 62-7 and 63-3.			
	If you have an exemption from e-filing under Practice Book Section 60-8, attach a list with the name, address, e-mail address, telephone number, and facsimile number of each counsel of record and the address where the copy was delivered.		If this appeal is a criminal or habeas corpus matter, I certify that a copy of this appeal form will immediately be delivered to the Office of the Chief State's Attorney Appellate Bureau. Date to be delivered	
	Signed (Counsel of record)		Date signed	
	crism6678		01/17/2017	
	To be filed with the Appellate Clerk within ten days of the filing of the appeal, if applicable. See Practice Book Section 63-4.			
	1. Preliminary Statement of the Issues 2. Court Reporter's Acknowledgment or Certificate that no transcript is necessary 3. Docketing Statement 4. Statement for Preargument Conference (form JD-SC-28A) 5. Constitutionality Notice 6. Sealing Order form, if any			
<input checked="" type="checkbox"/> Entry Fee Paid <input type="checkbox"/> No Fees Required <input type="checkbox"/> Fees, Costs, and Security waived by Judge (enter Judge's name below)				
Judge		Date waived		

Print Form

Reset Form

Appeal Form (continued)

CASE NAME:

CRISMALE, NICOLAS v. WALSTON, CHRISTOPHER ANDREW Et Al

Parties & Appearances

PARTY/PARTIES INITIATING THE APPEAL

NICOLAS CRISMALE

Juris: 102746 KATRENA K ENGSTROM
& ASSOCIATES, LLC
51 ELM ST, SUITE 409
NEW HAVEN, CT 06510
Phone: (203) 562-9931 Fax: (203) 776-9494
Email: kengstrom@johnrwilliams.com

Juris: 067962 JOHN R WILLIAMS
ASSOCIATES, LLC
51 ELM ST STE 409
NEW HAVEN, CT 06510
Phone: (203) 562-9931 Fax: (203) 776-9494
Email: jrw@johnrwilliams.com

Nicholas J Crismale

Self Rep: Nicholas J Crismale
75 Kimberly Dr
Guilford, CT 06437
Phone: (203) 453-6678 Fax:
Email: Branfordlobster@sbcglobal.net

ALL OTHER PARTIES AND APPEARANCES

CHRISTOPHER ANDREW WALSTON - Judgment For

Juris: 101040 KATZ & SELIGMAN PC
130 WASHINGTON STREET
HARTFORD, CT 06106
Phone: (860) 547-1857 Fax: (860) 241-9127
Email: sseligman@katzandseligman.com

Juris: 409458 VINCENT CERVONI
221 NORTH MAIN STREET
WALLINGFORD, CT 06492
Phone: (203) 265-5789 Fax: (203) 284-5002
Email: vinny@attorneycervoni.com

JEFFREY SAMORAJCZYK - Judgment For

Juris: 418368 JOSEPH A JORDANO
AG-CIVIL RIGHTS/TORTS
55 ELM ST PO BOX 120
HARTFORD, CT 06105
Phone: (860) 808-5160 Fax: (860) 808-5064
Email: joseph.jordano@ct.gov

Appeal Form (continued)

TODD AARON CHENACKI - Judgment For
Juris: 418368 JOSEPH A JORDANO
AG-CIVIL RIGHTS/TORTS
55 ELM ST PO BOX 120
HARTFORD, CT 06105
Phone: (860) 808-5160 Fax: (860) 808-5084
Email: joseph.jordano@ct.gov

A.C. NO. 40026 : APPELLATE COURT
NICHOLAS CRISMALE : STATE OF
v. : CONNECTICUT

CHRISTOPHER ANDREW WALSTON, ET AL. ; FEBRUARY 15, 2017

DOCKETING STATEMENT

Pursuant to Practice Book § 63-4(a)(3), the plaintiff hereby sets forth the following:

1. the names and addresses of all parties and counsel of record as follows:

NICHOLAS CRISMALE plaintiff/appellant
75 Kimberly Drive
Guilford, CT 06437

Jennifer Antognini-O'Neill, Esq. appellate counsel for plaintiff/appellant
Jennifer Antognini-O'Neill, LLC
679 Ridge Road
Middletown, CT 06457
Tel: (860) 490-4579
Fax: (860) 346-3467
joneillz@sbcglobal.net

John R. Williams trial counsel for plaintiff
& Associates, LLC
51 Elm Street, Suite 409
New Haven, CT 06510
jwilliams@johnrwilliams.com

Katrena Engstrom trial counsel for plaintiff
51 Elm Street, Suite 409
New Haven, CT 06510
Tel: (203) 562-9931
Fax: (203) 776-9494
kengstrom@johnrwilliams.com

CHRISTOPHER ANDREW WALSTON defendant/appellee
426 State Street
Guilford, CT 06437

Attorney Vincent Cervoni
221 North Main Street
Wallingford, CT
Tel: (203) 265-5789
Fax: (203) 284-5002
vinny@attorneycervoni.com

counsel for defendant/appellee

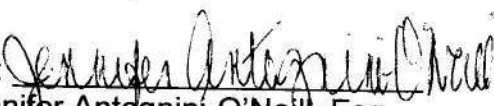
Attorney Christian Sterling
Katz & Seligman, PC
130 Washington Street
Hartford, CT 06106
Tel: (860) 547-1857
Fax: (860) 241-9127
csterling@katzandseligman.com

counsel for defendant/appellee

2. There are no appeals pending in either the Supreme Court or Appellate Court which arise from substantially the same controversy as the cause on appeal, or involve issues closely related to those presented by this appeal.

3. Each party included exhibits for the court's consideration in the context of the defendant's motion for summary judgment.

THE PLAINTIFF
NICHOLAS CRISMALE

By: 
Jennifer Antognini-O'Neill, Esq.
Jennifer Antognini-O'Neill, LLC
Juris No. 408569
679 Ridge Road
Middletown, CT 06457
Tel: (860) 490-2789
Fax: (860) 346-3467
joneillz@sbcglobal.net

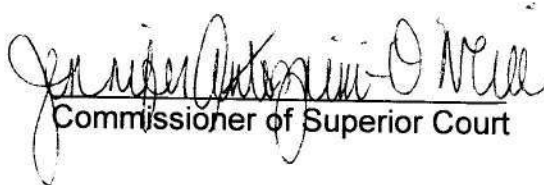
CERTIFICATION

I hereby certify that this docketing statement complies with all requirements of Practice Book § 62-7, and all other applicable rules of appellate procedure. This document does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law. No fee is required for the filing of this document.

I further certify that a copy of the foregoing document was sent electronically on February 15, 2017, to all counsel of record, as set forth below. I certify that all counsel of record consent to receiving this motion by electronic mail.

Attorney Vincent Cervoni
221 North Main Street
Wallingford, CT
Tel: (203) 265-5789
Fax: (203) 284-5002
vinny@attorneycervoni.com

Attorney Christian Sterling
Katz & Seligman, PC
130 Washington Street
Hartford, CT 06106
Tel: (860) 547-1857
Fax: (860) 241-9127
csterling@katzandseligman.com


Commissioner of Superior Court

CERTIFICATION

Pursuant to Practice Book § § 62-7 and 67-2, I hereby certify that on October 27, 2017 this brief and appendix were delivered electronically to each counsel of record at his or her last known email address as follows:

Attorney Vincent Cervoni
221 North Main Street
Wallingford, CT 06492
Tel: (203) 265-5789
Fax: (203) 284-5002
vinny@attorneycervoni.com

Attorney Christian Sterling
Katz & Seligman, PC
130 Washington Street
Hartford, CT 06106
Tel: (860) 547-1857
Fax: (860) 241-9127
csterling@katzandseligman.com


Jennifer Antognini-O'Neill, Esq.